A

# COLLECTION

OF

# THE ACTS

OF

# THE INDIAN LEGISLATURE

FOR THE YEAR

1929

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CALCUTTA GOVERNMENT OF INDIA
CENTRAL PUBLICATION BRANCH
1930

*Price 1 anna or 1½d*

# TITLES OF ACTS

OF

## THE INDIAN LEGISLATURE

FOR THE YEAR 1929

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I An Act further to amend the Indian Limitation Act, 1908

II " *to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate*

III " further to amend the Presidency towns Insolvency Act, 1909 for a certain purpose

IV " further to amend the Indian Tariff Act 1894, for certain purposes

V " further to amend the Workmen's Compensation Act 1923, for certain purposes

VI " to fix the duty on salt manufactured in, or imported by land into certain parts of British India to fix maximum rates of postage under the Indian Post Office Act 1898 further to amend the Indian Paper Currency Act 1923 to fix rates of income tax and to raise the import and excise duties on motor spirit

VII " to make provision for the investigation and settlement of trade disputes and for certain other purposes

VIII " *to provide for the levy of a cess on soft coke despatched by* rail from collieries in the provinces of Bengal and Bihar and Orissa

IX " further to amend the Indian Boilers Act 1923 for certain purposes

X " to provide for certain matters in connection with the taking of the Census

XI " further to amend the Calcutta Pilots Act 1859 and the Indian Ports Act 1908 in order to vest the control of the Bengal Pilot Service in the Governor General in Council

XII " further to amend the Indian Income tax Act 1922 for certain purposes

XIII " further to amend the Indian Territorial Force Act 1920, for a certain purpose

XIV " further to amend the Indian Cotton Cess Act 1923, for certain purposes

| | | |
|---|---|---|
| XV | An Act | further to amend the Indian Registration Act, 1908, for certain purpose |
| XVI | ,, | further to amend the Burma Salt Act 1917, for certain p poses |
| XVII | ,, | further to amend the Guardians and Wards Act, 1890, f a certain purpose |
| XVIII | ,, | further to amend the Indian Succession Act 1925 for certa purposes |
| XIX | ,, | to restrain the solemnisation of child marriages |
| XX | ,, | further to amend the Transfer of Property Act 1882 f certain purposes |
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# ACT No I OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 20th February 1929 )*

**An Act further to amend the Indian Limitation Act, 1908**

f 1908 WHEREAS it is expedient further to amend the Indian Limitation Act 1908 for the purposes hereinafter appearing It is hereby enacted as follows —

1 (*1*) This Act may be called the Indian Limitation (Amendment) Act, 1929 Short title and commencement

(*2*) It shall come into force on the 1st day of January 1929

f 1908 2 In section 10 of the Indian Limitation Act 1908 (hereinafter referred to as the said Act) the following paragraph shall be inserted namely — Amendment of section 10 Act IX of 1908

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of any such property shall be deemed to be the trustee thereof

3 In the First Division of the First Schedule to the said Act — Amendment of First Schedule to Act IX of 1908

(*a*) after Article 48 the following Articles shall be inserted namely —

| | | |
|---|---|---|
| 48A To recover moveable property conveyed or bequeathed in trust deposited or pawned and afterwards bought from the trustee depositary or pawnee for a valuable consideration | Three years | When the sale becomes known to the plaintiff |
| 48B To set aside sale of moveable property comprised in a Hindu Muhammadan or Buddhist religious or charitable endowment made by a manager thereof for a valuable consideration | Three years | When the sale become known to the plaintiff |

(*b*) Article

(*b*) Article 133 shall be omitted,

(*c*) in Article 134, in the third column, for the words "The date of the transfer" the words "When the transfer becomes known to the plaintiff" shall be substituted and

(*d*) after Article 134, the following Articles shall be inserted namely —

| | | |
|---|---|---|
| 134A To set aside a transfer of immoveable property comprised in a Hindu Muhammadan or Buddhist religious or charitable endowment made by a manager thereof for a valuable consideration | Twelve years* | When the transfer becomes known to the plaintiff |
| 134B By the manager of a Hindu Muhammadan or Buddhist religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration | Twelve years | The death resignation or removal of the transferor |
| 134C By the manager of a Hindu Muhammadan or Buddhist religious or charitable endowment to recover possession of moveable property comprised in the endowment which has been sold by a previous manager for a valuable consideration | Twelve years | The death resignation or removal of the seller |

# ACT No II OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 21st February 1929 )*

**An Act to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate**

WHEREAS it is expedient to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate It is hereby enacted as follows —

1 (*1*) This Act may be called the Hindu Law of Inheritance (Amendment) Act 1929 **Short title extent and application**

(*2*) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas, but it applies only to persons who but for the passing of this Act would have been subject to the law of Mitakshara in respect of the provisions herein enacted and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will

2 A son's daughter daughter s daughter, sister and sister s son shall in the order so specified, be entitled to rank in the order of succession next after a father s father and before a father s brother **Order of succession of certain heirs**

Provided that a sister s son shall not include a son adopted after the sister's death

3 Nothing in this Act shall— **Savings**

(*a*) affect any special family or local custom having the force of law or

(*b*) vest in a son's daughter daughter s daughter or sister an estate larger than or different in kind from that possessed by a female in property inherited by her from a male according to the school of Mitakshara law by which the male was governed, or

(*c*) enable more than one person to succeed by inheritance to the estate of a deceased Hindu male which by a customary or other rule of succession descends to a single heir

*Price 1 anna or 1½d* ]

MGIPC—L—IX —23 3 29—5 000

# ACT No III OF 1929.

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 22nd March, 1929 )*

**An Act further to amend the Presidency-towns Insolvency Act, 1909, for a certain purpose**

WHEREAS it is expedient further to amend the Presidency towns Insolvency Act 1909 for the purpose hereinafter appearing, It is hereby enacted as follows — (I of 1909)

Short title — 1 This Act may be called the Presidency towns Insolvency (Amendment) Act, 1929

Amendment section 69 Act III of — 2 In sub section (2) of section 69 of the Presidency-towns Insolvency Act 1909, for the words " six months " the words ' one year ' shall be substituted (I of 1909)

*Price 1 anna or 1½d* ]

MGIPC—L—IX 29—16-4 9—4 000

# ACT No IV OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 22nd March 1929 )*

**An Act further to amend the Indian Tariff Act, 1894, for certain purposes**

VIII of 1894 WHEREAS it is expedient further to amend the Indian Tariff Act 1894 for the purpose of altering the import duty upon printing type and of imposing an import duty upon rubber insulated copper wires and cables not already dutiable, It is hereby enacted as follows —

**1** (*1*) This Act may be called the Indian Tariff (Amendment) Act, 1929 Short title and commencement

(*2*) It shall come into force on the 1st day of April 1929

VIII of 1894 **2.** In the Second Schedule to the Indian Tariff Act 1894 the following amendments shall be made namely — Amendments to Schedule II Act VIII of 1894

(*1*) Item No 43B shall be re numbered as No 43C and after Item No 43A the following item shall be inserted under the heading ' MACHINERY ', namely —

| | | | |
|---|---|---|---|
| 43B | RUBBER INSULATED COPPER WIRES AND CABLES no core of which has a sectional area of less than one eightieth part of a square inch whether made with any additional insulating or covering material or not | *Ad valorem* | 5 per cent |

(*2*) After Item No 45B the following item shall be inserted under the heading MISCELLANEOUS namely —

| | | | |
|---|---|---|---|
| "46 | PRINTING TYPE | Pound | One anna |

(*3*) In Item No 54 the word " type shall be omitted

*Price 1 anna or 1½d* ]

MGIPC—L—IX-29—2-5 29—7 000

# ACT No V of 1929.

[Passed by the Indian Legislature ]

(*Received the assent of the Governor General on the 29th March, 1929* )

**An Act further to amend the Workmen's Compensation Act, 1923, for certain purposes**

III of 1923 WHEREAS it is expedient further to amend the Workmen's Compensation Act, 1923, for certain purposes hereinafter appearing, It is hereby enacted as follows —

**1** This Act may be called the Workmen's Compensation (Amendment) Act 1929 Short title

**2** In the proviso to sub section (*1*) of section 3 of the Workmen s Compensation Act 1923 (hereinafter referred to as the said Act) the word " or ' at the end of clause (*b*) and the whole of clause (*c*) shall be omitted Amendment of section 3 Act VIII of 1923

**3** (*1*) Section 5 of the said Act shall be re numbered as sub section (*1*) of section 5, and in that sub section as so re numbered in the *Explanation*, for the words " this section " the words " this sub section " shall be substituted Amendment of section 5 Act VIII of 1923

(*2*) To the same section as so re numbered the following sub section shall be added, namely —

" (*2*) The provisions of sub section (*1*), other than the proviso shall apply to the calculation of wages for the purposes of clause (*n*) of sub section (*1*) of section 2 and of sub section (*3*) of that section "

**4** In section 8 of the said Act,— Amendment of section 8 Act VIII of 1923

(*a*) for sub sections (*1*) to (*3*) the following sub sections shall be substituted, namely —

" (*1*) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by



*Price 1 anna or 1½d* ]

by an employer shall be deemed to be a payment of compensation

Provided that, in the case of a deceased workman,—

(*a*) an employer may make to any dependant or other person, by whom the funeral expenses are to be or have been incurred, an advance not exceeding fifty rupees for the purpose of defraying the same in whole or in part, and may make other advances to dependants on account of compensation, not exceeding however an aggregate of one hundred rupees in the case of any one dependant,

(*b*) the amount of any advance made in accordance with the provisions of clause (*a*) to defray funeral expenses may be deducted by the employer from the lump sum to be deposited with the Commissioner, and the amount of any other advance so made to a dependant or so much thereof as does not exceed the compensation apportioned to him, shall be deducted by the Commissioner from such compensation and be repaid to the employer

(*2*) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto

(*3*) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him '

(*b*) in sub section (*4*) after the words under sub section (*1*) " the words " as compensation in respect of a deceased workman " shall be inserted, and after the words " fifty rupees " the following words shall be inserted, namely —

" or so much of that cost or of fifty rupees, whichever is less, as has not already been advanced by the employer on account of such expenses ",

(*c*) for sub section (*5*) the following sub-sections shall be substituted, namely —

" (*5*) Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub section (*4*), be apportioned among the dependants

dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit or may in the discretion of the Commissioner be allotted to any one dependant

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability and may, in other cases, pay the money to the person entitled thereto

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability such sum may be invested, applied or otherwise dealt with for the benefit of the woman or of such person during his disability, in such manner as the Commissioner may direct and where a half monthly payment is payable to any person under a legal disability, the Commissioner may of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman ", and

(*d*) sub section (*6*) shall be re numbered as sub section (*8*) and after that sub section the following sub section shall be added namely —

" (*9*) Where the Commissioner varies any order under sub section (*8*) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31 "

5 To section 23 of the said Act after the words " material objects the following words shall be added, namely — Amendment sect on 23, Act VIII of 1923

" and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure 1898 " of 1898

6 In

6 In sub section (1) of section 28 of the said Act,— Amendment of section 28 Act VIII of 1923

(a) for the words "to a person under a legal disability" the words "to a woman or a person under a legal disability" shall be substituted,

(b) clause (b) of the proviso shall be omitted, and

(c) in clause (d), for the words "to a person under any legal disability" the words "to a woman or a person under a legal disability" shall be substituted

7 In Schedule II to the said Act,— Amendment of Schedule II, Act VIII of 1923

(1) for clause (v) the following clause shall be substituted namely —

"(v) employed for the purpose of loading, unloading fuelling constructing repairing demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or",

(2) in clause (viii) for the word "cable" the words "line or cable or post or standard for the same" shall be substituted, and

(3) after clause (ix) the following clauses shall be added, namely —

" or

(x) employed upon a railway as defined in clause (4) of section 3 and sub section (1) of section 148 of the Indian Railways Act, 1890, by a person fulfilling a contract with the railway administration, or IX of 1890

(xi) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, or

(xii) employed, in connection with operations for winning natural petroleum or natural gas, as a rig builder, driller, driller's helper, oil well puller or in bailing or cleaning oil wells or putting in and taking out casings or drill pipes in oil wells or

(xiii) employed in any occupation involving blasting operations"

8 In Schedule IV to the said Act, for the words and letters "clause (a) or clause (b)" the word and figure "sub section (1)" shall be substituted Amendment of Sched. IV Act VIII of 1923.



MCIPC—L—IX 23—8—29— 930

# ACT No VI of 1929

[Passed by the Indian Legislature ]

*(Received the assent of the Governor General on the 30th March 1929 )*

**An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, further to amend the Indian Paper Currency Act, 1923, to fix rates of income tax, and to raise the import and excise duties on motor spirit**

WHEREAS it is expedient to fix the duty on salt manufactured in or imported by land into certain parts of British India to fix maximum rates of postage under the
1898 Indian Post Office Act, 1898, further to amend the Indian Paper Currency Act 1923 to fix rates of income tax, and to raise the import and excise duties on motor spirit, It is hereby enacted as follows —

1 (1) This Act may be called the Indian Finance Act 1929 **Short title, extent and duration.**

(2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas

(3) Sections 2 and 3 shall remain in force only up to the 31st day of March, 1930

2 The provisions of section 7 of the Indian Salt Act, **Fixation of salt duty**
1882 1882, shall, in so far as they enable the Governor General in Council to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of British India other than Burma and Aden be construed as if with effect from the 1st day of April, 1929 they imposed such duty at the rate of one rupee and four annas per maund of eighty two and two sevenths pounds avoirdupois of salt manufactured in, or imported by land into any such part and such duty shall for all the purposes of the said Act, be deemed to have been imposed by rule made under that section

3 With



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Postal rates. 3 With effect from the 1st day of April, 1929, the schedule contained in the First Schedule to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act VI of 1898

Amendment of Act X of 1923. 4 In sub section (7) of section 19 of the Indian Paper Currency Act 1923, for the figures "1929" the figures "1930" shall be substituted X of 1923

Income tax and super tax. 5 (1) Income tax for the year beginning on the 1st day of April 1929, shall be charged at the rates specified in Part I of the Second Schedule

(2) The rates of super-tax for the year beginning on the 1st day of April, 1929 shall, for the purposes of section 55 of the Indian Income tax Act 1922 be those specified in Part II of the Second Schedule XI of 1922.

(3) For the purposes of the Second Schedule, "total income" means total income as determined, for the purposes of income tax or super tax, as the case may be in accordance with the provisions of the Indian Income tax Act, 1922 XI of 1922.

Duties on motor spirit. 6 (1) In Schedule II to the Indian Tariff Act 1894, in Item No 40A for the words "Four annas" in the entry in the fourth column the words "Six annas" shall be substituted VIII of 1894

(2) In sub section (1) of section 3 of the Motor Spirit (Duties) Act, 1917 for the words "four annas" the words "six annas" shall be substituted II of 1917

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## SCHEDULE I

Schedule to be inserted in the Indian Post Office Act, 1898

[*See section 3*]

### THE FIRST SCHEDULE

INLAND POSTAGE RATES

[*See section 7*]

*Letters*

| | |
|---|---|
| For a weight not exceeding two and a half tolas | One anna |
| For every two and a half tolas or fraction thereof exceeding two and a half tolas | One anna |

*Postcards*

| | |
|---|---|
| Single | Half an anna |
| Reply | One anna |

Book

*Book Pattern and Sample Packets*

| | |
|---|---|
| For every five tolas or fraction thereof | Half an anna |

*Registered Newspapers*

| | |
|---|---|
| For a weight not exceeding eight tolas | Quarter of an anna |
| For a weight exceeding eight tolas and not exceeding twenty tolas | Half an anna |
| For every twenty tolas, or fraction thereof exceeding twenty tolas | Half an anna |

*Parcels*

| | |
|---|---|
| For a weight not exceeding twenty tolas | Two annas |
| For a weight exceeding twenty tolas and not exceeding forty tolas | Four annas |
| For every forty tolas or fraction thereof exceeding forty tolas | Four annas |

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## SCHEDULE II

[*See section 5*]

### PART I

### *Rates of Income tax*

A In the case of every individual Hindu undivided family unregistered firm and other association of individuals not being a registered firm or a company—

| | Rate |
|---|---|
| (1) *When the total income is less than Rs 2 000* | *Nil* |
| (2) When the total income is Rs 2 000 or upwards but is less than Rs 5 000 | Five pies in the rupee |
| (3) When the total income is Rs 5 000 or upwards but is less than Rs 10 000 | Six pies in the rupee. |
| (4) When the total income is Rs 10 000 or upwards but is less than Rs 20 000 | Nine pies in the rupee. |
| (5) When the total income is Rs 20 000 or upwards but is less than Rs 30 000 | One anna in the rupee. |
| (6) When the total income is Rs 30 000 or upwards but is less than Rs 40 000 | One anna and three pies in the rupee. |
| (7) When the total income is Rs 40 000 or upwards | One anna and six pies in the rupee |

| | |
|---|---|
| B In the case of every company and registered firm whatever its total income | One anna and six pies in the rupee |

PART II

## PART II

### *Rates of Super-tax*

In respect of the excess over fifty thousand rupees of total income—

| | Rate |
|---|---|
| (1) in the case of every company | One anna in the rupee. |
| (2) (a) in the case of every Hindu undivided family— | |
| (i) in respect of the first twenty five thousand rupees of the excess | *Nil* |
| (ii) for every rupee of the next twenty five thousand rupees of such excess | One anna in the rupee. |
| (b) in the case of every individual unregistered firm and other association of individuals not being a registered firm or a company for every rupee of the first fifty thousand rupees of such excess | One anna in the rupee. |
| (c) in the case of every individual, Hindu undivided family unregistered firm and other association of individuals not being a registered firm or a company— | |
| (i) for every rupee of the second fifty thousand rupees of such excess | One and a half annas in the rupee |
| (ii) for every rupee of the next fifty thousand rupees of such excess | Two annas in the rupee |
| (iii) for every rupee of the next fifty thousand rupees of such excess | Two and a half annas in the rupee |
| (iv) for every rupee of the next fifty thousand rupees of such excess | Three annas in the rupee |
| (v) for every rupee of the next fifty thousand rupees of such excess | Three and a half annas in the rupee |
| (vi) for every rupee of the next fifty thousand rupees of such excess | Four annas in the rupee. |
| (vii) for every rupee of the next fifty thousand rupees of such excess | Four and a half annas in the rupee |
| (viii) for every rupee of the next fifty thousand rupees of such excess | Five annas in the rupee |
| (ix) for every rupee of the next fifty thousand rupees of such excess | Five and a half annas in the rupee |
| (x) for every rupee of the remainder of the excess | Six annas in the rupee. |



MGIPC—L—IX 27—7 5-29—7 000

GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT

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# THE TRADE DISPUTES ACT, 1929
## (VII OF 1929)

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CALCUTTA GOVERNMENT OF INDIA
CENTRAL PUBLICATION BRANCH
1930

*Price 1 anna or 1½d*

# THE TRADE DISPUTES ACT, 1929
# (VII OF 1929)

## CONTENTS

# ACT No VII OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 12th April 1929 )*

**An Act to make provision for the investigation and settlement of trade disputes and for certain other purposes**

WHEREAS it is expedient to make provision for the investigation and settlement of trade disputes and for certain other purposes hereinafter appearing It is hereby enacted as follows —

1 (*1*) This Act may be called the Trade Disputes Act 1929 Short title extent commencement and duration

(*2*) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas

(*3*) It shall come into force on such date as the Governor General in Council may by notification in the Gazette of India appoint

(*4*) It shall remain in force for a period of five years only

2 In this Act unless there is anything repugnant in the subject or context — Interpretations

(*a*) Board means a Board of Conciliation constituted under this Act

(*b*) Court ' means a Court of Inquiry constituted under this Act

(*c*) employer in the case of any industry business or undertaking carried on by any department of the Government means the authority prescribed in this behalf or where no authority is prescribed the head of the department

(*d*) a person shall be deemed to be ' independent for the purpose of his appointment as the chairman or other member of a Court or a Board if he is

unconnected

unconnected with the dispute with reference to which the Court or the Board is appointed and with any trade or industry directly affected by the dispute,

(e) "lock out" means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him where such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons or of aiding another employer in compelling persons employed by him to accept terms or conditions of or affecting employment

(f) "prescribed" means prescribed by rules made under this Act

(g) "public utility service" means—

(i) any railway service which the Governor General in Council may by notification in the Gazette of India declare to be a public utility service for the purposes of this Act, or

(ii) any postal, telegraph or telephone service or

(iii) any industry business or undertaking which supplies light or water to the public or

(iv) any system of public conservancy or sanitation

(h) "railway company" means a railway company as defined in section 3 of the Indian Railways Act 1890 IX o

(i) "strike" means a cessation of work by a body of persons employed in any trade or industry acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment

(j) "trade dispute" means any dispute or difference between employers and workmen or between workmen and workmen which is connected with the employment or non employment or the terms of the employment or with the conditions of labour of any person, and

(k) "workman"

(k) 'workman' means any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward, but does not include any person employed in the naval military or air service of the Crown or in the Royal Indian Marine Service

### *Reference of Disputes to Courts and Boards*

3 If any trade dispute exists or is apprehended between an employer and any of his workmen the Local Government or where the employer is the head of a department under the control of the Governor General in Council or is a railway company the Governor General in Council may by order in writing,— Reference of disputes to Courts or Boards

(a) refer any matters appearing to be connected with or relevant to the dispute to a Court of Inquiry to be appointed by the Local Government or the Governor General in Council, as the case may be or

(b) refer the dispute to a Board of Conciliation to be appointed by the Local Government or the Governor General in Council, as the case may be, for promoting a settlement thereof

Provided that where both parties to the dispute apply whether separately or conjointly, for a reference to a Court or where both parties apply, whether separately or conjointly for a reference to a Board, and the authority having the power to appoint is satisfied that the persons applying represent the majority of each party a Court or a Board as the case may be shall be appointed accordingly

### *Courts of Inquiry*

4 (1) A Court shall consist of an independent chairman and such other independent persons as the appointing authority thinks fit or may if such authority thinks fit consist of one independent person Constitution of Courts

(2) A Court having the prescribed quorum may act notwithstanding any vacancy in the number of its members other than the chairman

5 (1) A

3

Duties of Courts

5 (*1*) A Court shall, either in public or in private, at its discretion, inquire into the matters referred to it and report thereon to the authority by which the Court was appointed

(*2*) A Court may, if it thinks fit, make interim reports

*Boards of Conciliation*

Constitution of Boards

6 (*1*) A Board shall consist of a chairman and two or four other members, as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person

(*2*) Where the Board consists of more than one person, the chairman shall be an independent person and the other members shall be either independent persons or persons appointed in equal numbers to represent the parties to the dispute all persons appointed to represent any party shall be appointed on the recommendation of that party

Provided that, if any party fails to make the necessary recommendation within the prescribed time the appointing authority shall select and appoint such persons as it thinks fit to represent that party

(*3*) A Board, having the prescribed quorum may act notwithstanding any vacancy in the number of its members other than the chairman

Provided that where a Board includes an equal number of persons representing the parties to the dispute and the services of any such person cease to be available before the Board has completed its work the authority appointing the Board shall appoint in the manner specified in sub section (*2*) another person to take his place and the proceedings shall be continued before the Board so re constituted

Duties of Board

7 (*1*) Where a dispute has been referred to a Board under this Act it shall be the duty of the Board to endeavour to bring about a settlement of the same, and for this purpose the Board shall in such manner as it thinks fit and without delay investigate the dispute and all matters affecting the merits thereof and the right settlement thereof, and in so doing may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute and may adjourn the proceedings for any period sufficient in its opinion to allow the parties to agree upon terms of settlement

(*2*) If

(2) If a settlement of a dispute is arrived at by the parties thereto after it has been referred to a Board and during the course of the investigation thereof, a memorandum of the settlement shall be drawn up by the Board and signed by the parties and the Board shall send a report of the settlement together with the memorandum to the authority by which the Board was appointed

(3) If no such settlement is arrived at during the course of the investigation, the Board shall, as soon as possible after the close thereof send a full report regarding the dispute to the authority by which the Board was appointed, setting forth the proceedings and steps taken by the Board for the purpose of ascertaining the facts and circumstances relating to the dispute and of bringing about a settlement thereof, together with a full statement of such facts and circumstances and its findings thereon and the recommendation of the Board for the determination of the dispute

(4) The recommendation of the Board shall deal with each item of the dispute and shall state in plain language what in the opinion of the Board ought and ought not to be done by the respective parties concerned

*General*

**8** No order of the Governor General in Council or of a Local Government appointing any person as a member of a Court or a Board shall be called in question in any manner　Finality of orders constituting Courts or Boards

**9** (1) Courts and Boards shall subject to the provisions of this Act follow such procedure as may be prescribed　Procedure and powers

(2) Courts and Boards shall have the same powers as are
of 1908　vested in Courts under the Code of Civil Procedure 1908 when trying a suit in respect of the following matters —

(a) enforcing the attendance of any person and examining him on oath

(b) compelling the production of documents and material objects, and

(c) issuing commissions for the examination of witnesses

and shall have such further powers as may be prescribed and every inquiry or investigation by a Court or Board shall be deemed to be a judicial proceeding within the meaning of
of 1860　sections 193 and 228 of the Indian Penal Code

**10** (1) If

Filling of vacancies

**10** (*1*) If the services of the chairman or of any other independent member of a Court or Board cease to be available at any time for the purposes of the Court or Board, the appointing authority shall in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy, and the proceedings shall be continued before the Court or Board so re constituted

(*2*) Where the Court or Board consists of one person only and his services cease to be available as aforesaid, the appointing authority shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed

Form of report

**11** The report of a Court or Board shall be in writing and shall be signed by all the members of the Court or Board

Provided that nothing in this section shall be deemed to prevent any member of a Court or Board from recording a minute of dissent from a report or from any recommendation made therein

Publication of results of inquiry

**12** (*1*) The final and any interim report of a Court or Board together with any minute of dissent recorded therewith, shall, as soon as possible after its receipt by the authority by which the Court or Board was appointed be published by that authority in such manner as it thinks fit

(*2*) The said authority may publish or cause to be published from time to time, in such manner as such authority thinks fit, any information obtained, or conclusions arrived at by the Court or Board as the result or in the course of its inquiry or investigation

Certain matters to be kept confidential

**13** (*1*) Notwithstanding anything contained in section 12, there shall not be included in any report or publication made or authorised by a Court or Board or the authority appointing a Court or Board any information obtained by the Court or Board in the course of its inquiry or investigation as to any Trade Union or as to any individual business (whether carried on by a person firm or company) which is not available otherwise than through evidence given before the Court or Board except with the consent in writing of the Secretary of the Trade Union or of the person, firm or company in question nor shall any individual member of the Court or Board or any person concerned in the proceedings before it disclose any such information without such consent

(*2*) If

(2) If any member of a Court or Board or any person present at or concerned in the proceedings before a Court or Board discloses any information in contravention of the provisions of sub section (1) he shall on complaint made by or under the authority of the Trade Union or individual business affected be punishable with fine which may extend to one thousand rupees

Provided that nothing in this sub section shall apply to the disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code (XLV of 1860)

14 Subject to such conditions and restrictions as may be prescribed any party to a dispute under inquiry or investigation by a Court or Board shall be entitled to be represented before the Court or Board by a legal practitioner (Representation of parties)

*Special provision regarding Public Utility Services*

15 (1) Any person who being employed in a public utility service goes on strike in breach of contract without having given to his employer within one month before so striking not less than fourteen days previous notice in writing of his intention to go on strike or having given such notice goes on strike before the expiry thereof shall be punishable with imprisonment which may extend to one month or with fine which may extend to fifty rupees or with both (Sudden strikes and lock-outs in utility services)

(2) Any employer carrying on any public utility service who locks out his workmen in breach of contract without having given them within one month before such lock-out not less than fourteen days notice in writing of his intention to lock them out or having given such notice locks them out before the expiry thereof shall be liable to imprisonment which may extend to one month or to a fine which may extend to one thousand rupees or with both

(3) Where the employer committing an offence under sub section (2) is a corporation company or other association of persons any secretary director or other officer or person concerned with the management thereof shall be punishable as therein provided unless he proves that the offence was committed without his knowledge or without his consent

(4) No Court shall take cognisance of any offence under this section or of the abetment of any such offence save on complaint

complaint made by or under authority from, the Governor General in Council or the Local Government

(5) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this section

*Special provision for Illegal Strikes and Lock outs*

Illegal strikes and lock out

16 (1) A strike or a lock out shall be illegal which—

(a) has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged and

(b) is designed or calculated to inflict severe general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action

(2) It shall be illegal to commence or continue, or to apply any sums in direct furtherance or support of any such illegal strike or lock out

(3) For the purposes of this section—

(a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen or between workmen and workmen in that trade or industry which is connected with the employment or non employment or the terms of the employment with the conditions of labour of persons in that trade or industry

(b) without prejudice to the generality of the expression "trade or industry" workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with agreements made with the same employer or group of employers

(4) A strike or a lock out shall not be deemed to be calculated to compel the Government unless such compulsion might reasonably be expected as a consequence thereof

Penalty

17 (1) If any person declares instigates incites others to take part in or otherwise acts in furtherance of a strike or lock-out which is illegal under the provisions of section 16 he shall be punishable with simple imprisonment which may extend

extend to three months, or with fine which may extend to two hundred rupees or with both

Provided that no person shall be deemed to have committed an offence under this section by reason only of his having ceased work or refused to continue to work or to accept employment

(2) No Court shall take cognisance of any offence under this section save on complaint made by, or under authority from the Governor General in Council or the Local Government

(3) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this section

**18** (1) No person refusing to take part, or to continue to take part in any strike or lock out which is illegal under the provisions of section 16 shall, by reason of such refusal or by reason of any action taken by him under this section be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled or be liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding Protection of persons with holding from illegal strike or lock out.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section and in any such proceeding the Civil Court may in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Courts thinks just

*Rules*

**19** (1) The Governor General in Council in respect of industries businesses and undertakings carried on by him or under his authority or by a railway company and the Local Governments in respect of other businesses industries or undertakings within their respective provinces may make rules Power to make rules

rules for the purpose of giving effect to the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely —

(*a*) the powers and procedure of Courts and Boards, including rules as to the summoning of witnesses, the production of documents relevant to the subject matter of an inquiry or investigation and the number of members necessary to form a quorum

(*b*) the allowances admissible to members of Courts and Boards and to witnesses,

(*c*) the ministerial establishment which may be allotted to a Court or Board and the salaries and allowances payable to members of such establishments,

(*d*) the conditions and restrictions subject to which persons may be represented by legal practitioners in proceedings under this Act before a Court or Board,

(*e*) any other matter which is to be or may be prescribed

(3) All rules made under this section shall be published in the Gazette of India or the local official Gazette, as the case may be and shall on such publication have effect as if enacted in this Act



GIPC—L—IV 4—9 4 30—3 000

# ACT No VIII OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October 1929 )*

**An Act to provide for the levy of a cess on soft coke despatched by rail from collieries in the provinces of Bengal and Bihar and Orissa**

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the promotion of the interests of the soft coke industry in the provinces of Bengal and Bihar and Orissa,

AND WHEREAS for this purpose it is expedient to levy a cess on soft coke despatched by rail from collieries in the said provinces,

It is hereby enacted as follows —

**1** (*1*) This Act may be called the Indian Soft Coke Cess Act, 1929 Short title, extent and commencement

(*2*) It extends to the whole of British India except Aden

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India appoint

**2** In this Act, unless there is anything repugnant in the subject or context,— Definitions

(*a*) ' Committee means the Soft Coke Cess Committee constituted under section 4

(*b*) prescribed means prescribed by rules made under this Act, and

(*c*) soft coke ' means all coke which is unsuitable for metallurgical purposes

**3** (*1*) There shall be levied and collected on all soft coke despatched by rail from collieries in the provinces of Bengal and Bihar and Orissa a cess at the rate of two annas per ton Imposition of soft coke cess

(*2*) The



*Price 1 anna or 1½d* ]

(2) The cess shall be collected by the Railway Administrations concerned by means of a surcharge on freight and shall be paid to the Committee after deduction of the expenses of collection (if any) in such manner as may be prescribed

Constitution of Soft Coke Cess Committee

4 (1) The Governor General in Council shall constitute a Committee, consisting of the following members, to receive and expend the proceeds of the cess —

(i) the Chief Mining Engineer to the Railway Board, *ex officio*

(ii) one person nominated by the Local Government of Bengal

(iii) one person nominated by the Local Government of Bihar and Orissa,

(iv) seven persons nominated by the Indian Mining Federation and

(v) one person nominated by the Indian Mining Association

Provided that if within the period prescribed in this behalf, any authority or body fails to make any nomination which it is entitled to make under this section, the Governor General in Council may himself nominate a member to fill the vacancy

(2) The Chief Mining Engineer to the Railway Board shall be *ex officio* President of the Committee

(3) Where a nominated member dies resigns ceases to reside in British India or becomes incapable of acting the Governor General in Council may on the recommendation of the authority or body which would have been entitled to make the nomination if it had been a first nomination under sub section (1), or where such recommendation is not made within the prescribed period, then on his own initiative nominate a person to fill the vacancy

(4) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Committee

Application of proceeds of soft coke cess

5 The proceeds of the cess and any other monies received by the Committee shall be applied to meeting the expenses of the Committee and the cost of such measures as it may consider advisable to take for promoting the sale and improving the methods of manufacture of soft coke

6 (1) The

**6** (*1*) The Committee shall keep accounts of all monies received and expended under section 5 Keeping and auditing of accounts

(*2*) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the Governor General in Council and such auditors may disallow any item which has in their opinion been expended out of any monies so received otherwise than as directed by or under this Act

(*3*) If any item is disallowed an appeal shall lie to the Governor General in Council whose decision shall be final

**7** (*1*) The Governor General in Council may after consulting the Committee and after previous publication, make rules to carry out the purposes of this Act Power to make rules

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the regulation of the nomination of members of the Committee and the procedure of the Committee

(*b*) the regulation of the levy collection and payment of the cess and

(*c*) the form of accounts to be kept and the publication of an abstract of such accounts with the report of the auditors thereon

(*3*) All such rules shall be published in the Gazette of India

**8** Sections 2 to 7 shall remain in force only until the 31st December 1934 Time during which sections 2 to 7 are to remain in force

Provided that the Governor General in Council may, on the recommendation of the Committee declare by notification in the Gazette of India that the said sections shall continue in force for any further period specified in such notification

**9** When sections 2 to 7 cease to be in force all monies and other property in the possession of the Committee shall revert to His Majesty Disposal of surplus proceeds

MGIPC—L—IX-84—14 8 30—1 000

# ACT No IX OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

(*Received the assent of the Governor General on the 1st October, 1929* )

**An Act further to amend the Indian Boilers Act, 1923, for certain purposes**

WHEREAS it is expedient further to amend the Indian Boilers Act 1923, for the purposes hereinafter appearing It is hereby enacted as follows —

1 This Act may be called the Indian Boilers (Amendment) Act 1929 Short title.

2 In clause (*b*) of section 2 of the Indian Boilers Act, 1923 (hereinafter referred to as the said Act), the words " for use outside such vessel " shall be omitted Amendment of section 2 Act V of 1923

3 Section 34 of the said Act shall be re numbered as sub section (*2*) of section 34 and the following sub section shall be inserted as sub section (*1*) of that section, namely — Amendment of section 34 Act V of 1923

34 (*1*) The Local Government may, by notification in the local official Gazette, exempt from the operation of this Act *subject to such conditions and restrictions as it thinks* fit any boilers or classes or types of boilers used exclusively for the heating of buildings or the supply of hot water " Exemptions

*Price 1 anna or 1½d* ]

MGIPC—L—IX 11—3—11 29—1 000

# ACT No X OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October 1929 )*

**An Act to provide for certain matters in connection with the taking of the Census**

WHEREAS it has been determined to take a census of *British India during the year 1931 and it is expedient* to provide for certain matters in connection with the taking of such census It is hereby enacted as follows —

1 (*1*) This Act may be called the Indian Census Act 1929 **Short title and extent**

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

2 (*1*) The Local Government may appoint any person to take or aid in or supervise the taking of the census within any specified local area **Appointment of census-officers**

(*2*) Persons so appointed shall be called census officers

(*3*) The Local Government may delegate to such authority, as it thinks fit, the power of appointing census officers which is conferred by this section

3 (*1*) A declaration in writing signed by any officer authorised by the Local Government in this behalf, that any person has been duly appointed a census officer for any local area shall be conclusive proof of such appointment **Proof of appointment of census-officers and that they are public servants**

(*2*) All census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code ...t 1860

4 (*1*) (*a*) Every officer in command of any body of men belonging to His Majesty's naval military or air forces or to His Majesty's Indian Marine Service or of any vessel of war **Discharge of duties of census-officers in certain cases**

(*b*) every person (except a pilot or harbour master) having charge or control of a vessel

(*c*) every



*Price 1 anna or 1½d* ]

(c) every person in charge of a lunatic asylum, hospital, workhouse, prison reformatory or lock up or of any public, charitable, religious or educational institution,

(d) every keeper secretary or manager of any *sarai*, hotel boarding house, lodging house emigration depot or club, and

(e) every occupant of immoveable property who has at the time of the taking of the census not less than twenty persons living on or in such property, and every manager or officer of a railway or other commercial or industrial establishment who has at such time not less than ten persons employed under him,

shall if so required by the District Magistrate or by such officer as the Local Government may appoint in this behalf, perform such of the duties of a census officer in relation to the persons who at the time of the taking of the census are under his command or charge, or are inmates of his house or present on or in such immoveable property or are employed under him as such Magistrate or officer may, by written order direct

(2) All the provisions of this Act relating to census officers shall apply so far as they can be made applicable, to all persons while performing such duties under this section, and any person refusing or neglecting to perform any duty which he is directed under this section to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code XLV of 1[...]

Pow[er] of District Magistrate to call upon [ce]rtain persons to give assistance

5 (1) The District Magistrate, or such officer as the Local Government may appoint in this behalf for any local area may by written order which shall have effect throughout the limits of his district or of such local area, as the case may be call upon—

(a) all owners and occupiers of land, tenure holders, farmers assignees of land revenue and lessees of fisheries under the Burma Fisheries Act, 1905, or the Upper Burma Land and Revenue Regulation, 1889 or their agents Bur Act I of 190[5] III of 1889

(b) all village officers and servants in estates as defined in the Madras Proprietary Estates Village Service Act, 1894, and Mad Act [I] 1894

(c) all members of panchayats appointed under the Village Chaukidari Act, 1870, or the Sylhet and Cachar Rural Police Regulation, 1883 or members Ben Act V[I] 1870 I of 1883

of

of union boards established under the Bengal Village Self Government Act, 1919, all ghatwals, Unit tahsildars and members of a panchayat appointed under the Bihar and Orissa Village Administration Act 1922 all members of village-authorities constituted under the Assam Local Self Government Act 1915 or the Assam Rural Self Government Act 1926 and all village headmen in the Kumaun Division of the United Provinces

...of
Act III
Act I of
Act VII

to give such assistance as he needs towards the taking of a census of the persons who are at the time of the taking of the census on the lands of such owners occupiers holders farmers and assignees or within the limits of such fisheries or in the villages or other areas for which such village officers and servants panchayats, union boards village authorities, ghatwals, Unit tahsildars or village headmen are appointed, as the case may be

(2) Such order shall specify the nature of the assistance required, and such owners occupiers, holders farmers, assignees and lessees, or their agents, and such village officers and servants the members of such panchayats, union boards and village authorities and such ghatwals Unit tahsildars and village headmen shall be bound to obey it

Asking of questions by census officers

**6** Every census officer may ask all such questions of all persons within the limits of the local area for which he is appointed as by instructions issued in this behalf by the Local Government and published in the official Gazette, he may be directed to ask

Obligation to answer questions

**7** Every person of whom any question is asked under the last foregoing section shall be legally bound to answer such question to the best of his knowledge or belief

Provided that no person shall be bound to state the name of any female member of his household and no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention

Occupiers to allow access and permit affixing of numbers

**8** Every person occupying any house enclosure, vessel or other place shall allow census officers such access thereto as they may require for the purposes of the census and as having regard to the customs of the country, may be reasonable and shall allow them to paint on or affix to the place such

such letters, marks or numbers as may be necessary for the purpose of the census

Occupier or manager to fill up schedule

9 (1) Subject to such orders as the Local Government may issue in this behalf, any census officer may leave, or cause to be left,

(a) at any dwelling house within the local area for which he is appointed, or

(b) with any manager or officer of any commercial or industrial establishment who has at the time of the taking of the census not less than ten persons employed under him,

a schedule for the purpose of its being filled up by the occupier of such house or of any specified part thereof, or by such manager or officer with such particulars as the Local Government may direct regarding the inmates of such house or part, or the person employed under such manager or officer at the time of the taking of the census, as the case may be

(2) When any such schedule has been so left, the occupier of the house or part to which it relates, or the manager or officer with whom it is left, shall fill it up, or cause it to be filled up, to the best of his knowledge or belief so far as regards the inmates of such house or part, or the persons employed under him at the time aforesaid as the case may be, and shall sign his name thereto, and when so required shall deliver the schedule so filled up and signed to the census officer or to such person as the census officer may direct

Penalties.

10 In any of the following cases namely —

(a) if a census officer or a person lawfully required to give assistance towards the taking of a census refuses or neglects to use reasonable diligence in performing any duty imposed upon him or in obeying any order issued to him in accordance with this Act or with any rule duly made thereunder,

(b) if a census officer intentionally puts any offensive or improper question or knowingly makes any false return, or, without the previous sanction of the Governor General in Council or the Local Government discloses any information which he has received by means of or for the purposes of a census return,

(c) if

(*c*) if any person refuses to answer to the best of his knowledge or belief any question asked of him by a census officer which he is legally bound by section 7 so to answer

(*d*) if any person occupying any house, enclosure, vessel or other place refuses to allow a census officer such reasonable access thereto as he is required by section 8 to allow,

(*e*) if any person removes, obliterates, alters or injures before the 31st day of March, 1931, any letters, marks or numbers which have been painted or affixed for the purposes of the census

(*f*) if any occupier of a dwelling house or part thereof or any person with whom a schedule is left under section 9 knowingly and without sufficient cause fails to comply with the provisions of section 9, or makes any false return under that section,

he shall be punishable with fine which may extend to fifty rupees

**11** (*1*) The Government may by notification in the official Gazette declare before what classes of Magistrates prosecutions under this Act may be instituted — Jurisdiction in Prosecutions

(*2*) Unless and until a notification is published under sub section (*1*) all prosecutions under this Act shall, in the towns of Calcutta Madras and Bombay, be instituted before a Presidency Magistrate and elsewhere, before the District Magistrate

(*3*) No prosecution under this Act shall be instituted except with the previous sanction of the Local Government, or of some officer authorised by the Local Government in this behalf

**12** No person shall have a right to inspect any book register or record made by a census officer in the discharge of his duty as such officer or any schedule delivered under section 9 and notwithstanding anything to the contrary in the Indian Evidence Act 1872 no entry in any such book, register record or schedule shall be admissible as evidence in any civil proceeding or any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 — Records of census not open to inspection or admissible in evidence in certain proceedings

**13** Notwithstanding anything in any enactment or rule with respect to the mode in which a census is to be taken in any municipality, the municipal authority may, at the time appointed — Temporary suspension of local enactments and rules as to mode of taking

Census in municipalities

appointed for the taking of the census of British India during the year 1931, cause the census of the municipality to be taken wholly or in part by any method authorised by this Act

Power in regard to expenses

14 Notwithstanding anything in any enactment or rule, in regard to municipal, local, union or village funds, the Local Government may direct that the whole or any part of any expenses incurred for anything done in accordance with this Act may be charged to any municipal, local union or village fund constituted for and on behalf of the area within which such expenses were incurred

Power to make rules

15 (*1*) The Governor General in Council may make rules for carrying out the purposes of this Act

(*2*) In particular, and without prejudice to the generality of the foregoing power the Governor General in Council may make rules providing—

(*a*) for the appointment of census officers and of persons to perform any of the duties of census officers or to give assistance towards the taking of a census and for the general instructions to be issued to such officers or persons,

(*b*) for the enumerating of persons employed on railways and their families and of other classes of the population for whom it may be necessary or expedient to make special provision and

(*c*) for the enumeration of persons travelling on the night when a census is taken

(*3*) The Governor General in Council may by general or special order, direct that all or any of the powers conferred upon him by this section may also be exercised by any Local Government with respect to the territories administered by it

MGIPC—L—IX-8—14 8-30—1 000

# ACT No XI OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October, 1929 )*

**An Act further to amend the Calcutta Pilots Act, 1859, and the Indian Ports Act, 1908, in order to vest the control of the Bengal *Pilot* Service in the Governor General in Council**

WHEREAS it is expedient further to amend the Calcutta Pilots Act 1859 and the Indian Ports Act, 1908, in order to vest the control of the Bengal Pilot Service in the Governor General in Council, It is hereby enacted as follows — (XII of 1859. XV of 1908.)

1 (*1*) This Act may be called the Bengal Pilot Service (Centralisation of Administration) Act, 1929 (Short title and commencement.)

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India appoint

2 (*1*) In sections 2 3 4, 17 18, 19 and 20 of the Calcutta Pilots Act, 1859, for the words " Lieutenant Governor of Bengal or the words " said Lieutenant Governor ", as the case may be, wherever they occur, the words ' Governor General in Council ' shall be substituted (Amendment of Act XII of 1859. XII of 1859.)

(*2*) In section 9 of the said Act for the words " Magistrate of Police the words " Presidency Magistrate " shall be substituted

*(3) In sub section (1) of section 15 of the said Act, for the* words ' Local Government " the words ' Governor General in Council shall be substituted

3 To sub section (*1*) of section 35 of the Indian Ports Act *1908* the *following* proviso shall be added namely — (Amendment of section 35, Act XV of 1908. XV of 1908.)

Provided that the rates of fees for pilotage within the Port of Calcutta shall be fixed by the Governor General in Council '

4 Where anything done under the Calcutta Pilots Act, 1859 or the Indian Ports Act 1908 is in force immediately prior to the commencement of this Act it shall be deemed as from the commencement of this Act to have been done under the said Acts as hereby amended (Saving of things done under Act XII of 1859 and Act XV of 1908. XII of 1859. XV of 1908.)

*Price 1 anna or 1½d* ]

MGIPC—L—IX 56—13-8-30—1 000

# ACT No XII OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October, 1929 )*

**An Act further to amend the Indian Income-tax Act, 1922, for certain purposes**

WHEREAS it is expedient further to amend the Indian Income tax Act 1922 for the purposes hereinafter appearing It is hereby enacted as follows —

**1** (*1*) This Act may be called the Indian Income tax (Provident Funds Relief) Act 1929 Short title and commencement

(*2*) It shall come into force on such date as the Governor General in Council may by notification in the Gazette of India appoint

**2** To sub section (*3*) of section 4 of the Indian Income tax Act 1922 (hereinafter referred to as the said Act) the following clause shall be added namely — Amendment of section 4 Act XI of 1922

(*iv*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 58A '

**3** In sub section (*3*) of section 15 of the said Act after the word and figure section 7 the words and any sums exempted under sub section (*1*) of section 58F ' shall be inserted Amendment of section 15 Act XI of 1922

**4** In section 58 of the said Act — Amendment of section 58 Act XI of 1922

(*a*) in the proviso to sub section (*1*) after the word and figures section 57 the words figures and letter and under section 58H shall be added and

(*b*) in sub section (*2*) after the word and figures section 57 the words figures and letter and section 58H shall be inserted

**5** After



*Price 1 anna or 1½d* ]

Insertion of new Chapter IXA in Act XI of 19—. 5 After Chapter IX of the said Act the following Chapter shall be inserted namely —

## "CHAPTER IXA

### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

Definitions 58A In this Chapter, unless there is anything repugnant in the subject or context —

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter

(*b*) an "employer" means—

(*i*) a Hindu undivided family company, firm or other association of individuals or persons, or

(*ii*) an individual engaged in a business profession or vocation whereof the profits and gains are assessable to income tax under section 10 or section 11

maintaining a provident fund for the benefit of his or its employees

(*c*) an "employee means an employee participating in a provident fund but does not include a personal or domestic servant

(*d*) a "contribution means any sum credited by or on behalf of any employee out of his salary or by an employer out of his own monies to the individual account of an employee but does not include any sum credited as interest

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year arising from contributions and interest

(*g*) the

(*g*) the 'accumulated balance due' to an employee means the balance to his credit or such portion thereof as may be claimable by him under the regulations of the fund on the day he ceases to be an employee of the employer maintaining the fund and

(*h*) the 'regulations of a fund' means the special body of regulations governing the constitution and administration of a particular provident fund

58B (*1*) The Commissioner of Income tax may accord recognition to any provident fund which in his opinion, satisfies the conditions prescribed in section 58C and the rules made thereunder and may at any time withdraw such recognition if in his opinion, the provident fund contravenes any of those conditions The according and withdrawal of recognition.

(*2*) The Governor General in Council may, at his discretion direct the Commissioner of Income tax to refuse to accord recognition to any provident fund, or may at any time, withdraw recognition from any recognised provident fund

(*3*) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf such date not being later than the last day of the financial year in which the order is made

(*4*) An order withdrawing recognition shall take effect from the day on which it is made

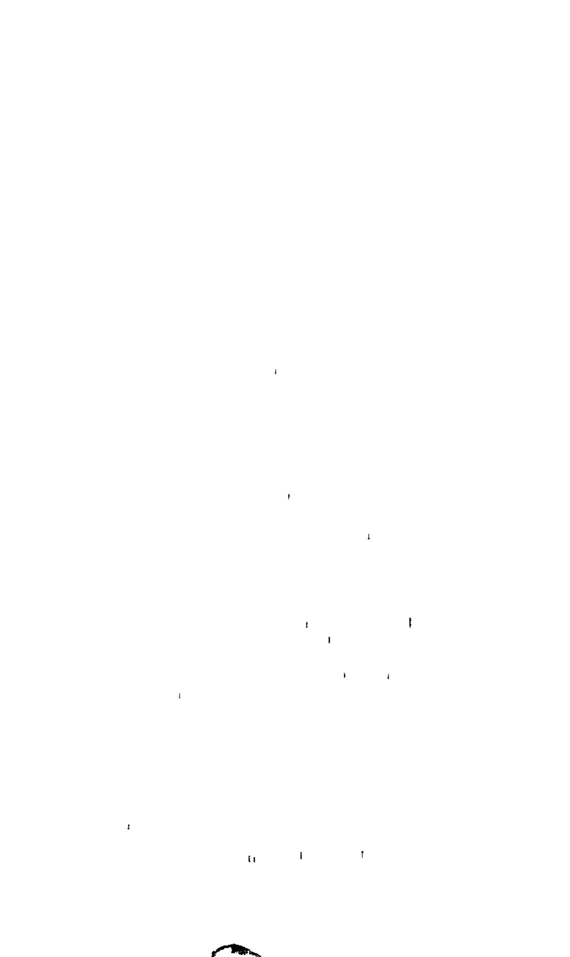
(*5*) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order to the Central Board of Revenue

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue

58C (*1*) In order that a provident fund may receive and retain recognition it shall satisfy the conditions set out below and any other conditions which the Governor General in Council may, by rule, prescribe— Conditions to be satisfied by a recognised provident fund.

(*a*) All employees shall be employed in India or shall be employed by an employer whose principal place of business is in British India

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year and



and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year and credited to the employee's individual account in the fund

(c) Subject to the provisions of section 58D the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year and shall be credited to the employee's individual account at intervals not exceeding one year

(d) The fund shall consist of contributions as above specified of accumulations thereof and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith and of no other sums

(e) The fund shall be vested in two or more trustees under a trust which shall not be revocable save with the consent of all the beneficiaries

(f) The employer shall not be entitled to recover any sum whatsoever from the fund save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee and to interest (simple and compound) credited in respect of such contributions and accumulations thereof in accordance with the regulations of the fund

(g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund

(h) Save as provided in clause (g) or in accordance with such conditions and restrictions as the Governor General in Council may by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him

(2) where

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder the regulation shall, to the extent of the repugnance, be of no effect

The Commissioner may at any time, require that such repugnance shall be removed from the regulations of the fund

Power to relax restrictions of employer's contributions in certain cases

58D Subject to any rules which the Governor General in Council may make in this behalf the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub section (1) of section 58C—

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem, and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund

Annual accretion deemed to be income received

58E The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year and subject to the exemptions specified in section 58F shall be liable to income tax and super tax

Provided that, for the purpose of sub section (2) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income

Exemption of annual accretion from income tax

58F (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one sixth of his salary in that year

(2) In the accounts of a recognised provident fund, the contributions exempted from income tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the

the Governor General in Council may, by notification in the Gazette of India fix in this behalf

Exemption of accumulated balance from Income-tax and super tax

58G Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years and the accumulated balance due to him becomes payable such accumulated balance shall be exempt from payment of income tax and super tax, and shall be excluded from the computation of his total income

Provided that the Commissioner of Income tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years if in his opinion the service has been terminated by reason of the employee's ill health or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee

(*2*) Where exemption from payment of income tax is not allowed under the provisions of sub section (*1*) the Income tax Officer shall calculate the total of the various sums of income tax from the payment of which the contributions and interest credited to the employee s individual account have been exempted under the provisions of sub sections (*1*) and (*2*) of section 58I and such total shall be payable by the employee in addition to any other income tax for which he may be liable for the year in which the accumulated balance due to him becomes payable

Deduction at source of income-tax payable on accumulated balances due

58H The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees shall at the time an accumulated balance due to an employee is paid deduct therefrom any income tax payable under sub section (*2*) of section 58G and any income tax and super tax payable on an employee s total income as determined under sub section (*3*) of section 58J and sub sections (*4*) to (*9*) of section 18 shall apply as if the sum to be deducted were income tax payable under the head ' Salaries '

Accounts of recognised provident funds

58I (*1*) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe

(*2*) The

(2) The accounts shall be open to inspection at all reasonable times by Income tax authorities and the trustees shall furnish to the Income tax Officer such abstracts thereof as the Central Board of Revenue may prescribe

58J (*1*) Where recognition is accorded to a provident fund with existing balances an account shall be made of the fund up to the day before the day on which the recognition takes effect showing the balance to the credit of each employee on such day and containing such further particulars as the Central Board of Revenue may prescribe

Treatment of balances in newly recognised provident funds

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee s account in the recognised provident fund and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect and sub sections (*3*) and (*4*) shall apply thereto

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income tax and super tax in accordance with the provisions of this Act other than this Chapter

(3) Subject to such rules as the Central Board of Revenue may make in this behalf the Income tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income tax if this Chapter had been in force from the date of the institution of the fund without regard to any tax which may have been paid on any such sum and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect and shall be included in the employee s total income for that year and for the purposes of assessment the remainder of the transferred balance shall be disregarded but no other exemption or relief by way of refund or otherwise shall be granted in respect of any sum comprised in such transferred balance

Provided that in cases of serious accounting difficulty the Commissioner shall have power subject to the said rules to make a summary calculation of such aggregate

(*4*) Notwithstanding

(*4*) Notwithstanding anything contained in condition (*h*) of sub section (*1*) of section 58C, an employee in order to enable him to pay the amount of tax assessed on his total income as determined under sub section (*3*), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income

(*5*) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or deal ing with it or with the balance to the credit of any individual employee before recognition is accorded in any manner which may be lawful

**Treatment of fund transferred by employer to trustee**

58K (*1*) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his em ployees and has not transferred the fund or any portion of it transfers such fund or portion to trustees in trust for the employees participating in the fund the amount so trans ferred shall be deemed to be of the nature of capital expen diture

(*2*) When an employee participating in such fund is paid the accumulated balance due to him therefrom any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest and exclusive of the employee s contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (*ix*) of sub section (*2*) of section 10 incurred in the year in which the accumulated balance due to the employee is paid

**Provisions relating to rules**

58L (*1*) All rules made under this Chapter shall be subject to the provisions of sub sections (*4*) and (*5*) of section 59

(*2*) In addition to any power conferred by this Chapter the Governor General in Council may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are share holders in the company

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment

assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund,

(d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn, and

(e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as he may deem requisite

58M This Chapter shall not apply to any provident fund to which the Provident Funds Act 1925, applies Application of this Chapter

MGIPC—L—IX 170—8 11 29—[illegible]

# ACT No XIII OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October, 1929 )*

**An Act further to amend the Indian Territorial Force Act, 1920, for a certain purpose**

WHEREAS it is expedient further to amend the Indian Territorial Force Act, 1920, for the purpose herein after appearing, It is hereby enacted as follows —

1 This Act may be called the Indian Territorial Force (Amendment) Act 1929 **Short title**

2 After sub section (2) of section 5 of the Indian Territorial Force Act, 1920, the following sub section shall be added, namely — **Amendment of section 5 Act XLVIII of 1920**

> ' (3) The Governor General in Council may by notification in the Gazette of India, declare in respect of any State in India the Province in which persons residing in that State may be enrolled and persons so residing shall thereupon be deemed for all purposes of this Act to reside in that Province '

*Price 1 anna or 1½d* ]

MCIPC—L—IX 191—9 11 29—?00

# ACT No XIV OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October, 1929 )*

**An Act further to amend the Indian Cotton Cess Act, 1923, for certain purposes**

XIV of 1923. WHEREAS it is expedient further to amend the Indian Cotton Cess Act 1923 for the purposes hereinafter appearing, It is hereby enacted as follows —

1 This Act may be called the Indian Cotton Cess (Amendment) Act 1929 Short title.

XIV of 1923. 2 In section 4 of the Indian Cotton Cess Act, 1923 (hereinafter referred to as the said Act),— Amendment of section 4 Act XIV of 1923.

(i) in clause (i), for the words "the Agricultural Adviser to the Government of India," the words "the Vice Chairman of the Imperial Council of Agricultural Research" shall be substituted, and

(ii) after clause (i) the following clause shall be inserted, namely —

"(ia) the Expert Adviser to the Imperial Council of Agricultural Research in agricultural matters,"

3 In sub section (2) of section 5 of the said Act, for the words "The Agricultural Adviser to the Government of India" the words "The Vice Chairman of the Imperial Council of Agricultural Research" shall be substituted Amendment of section 5, Act XIV of 1923.

*Price 1 anna or $1\frac{1}{2}d$* ]

MGIPC—L—IX 122—9 11 29— 600

# ACT No XV OF 1929.

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October, 1929 )*

**An Act further to amend the Indian Registration Act, 1908, for a certain purpose**

I of 1908 WHEREAS it is expedient further to amend the Indian Registration Act 1908, for the purpose hereinafter appearing It is hereby enacted as follows —

1 This Act may be called the Indian Registration (Amendment) Act 1929 Short title

of 1908 2 Section 56 of the Indian Registration Act, 1908, is hereby repealed Repeal of section 56 Act XVI of 1908

*Price 1 anna or 1½d* ]

MGIPC—I—IX 123—25 11 29—5 000

# ACT No XVI OF 1929.

[PASSED BY THE INDIAN LEGISLATURE ]

(*Received the assent of the Governor General on the 1st October, 1929* )

**An Act further to amend the Burma Salt Act 1917, for certain purposes**

Burma Act II of 1917 WHEREAS it is expedient further to amend the Burma Salt Act 1917 for the purposes hereinafter appearing, It is hereby enacted as follows —

1 This Act may be called the Burma Salt (Amendment) Act 1929 Short title

Burma Act II of 1917 2 In section 5 of the Burma Salt Act 1917 — Amendment of section 5 Burma Act II of 1917

(*a*) in clause (*a*), the word "other" in both places where it occurs, shall be omitted,

(*b*) in clause (*b*), for the word, letter and brackets "clause (*b*)," the word, letter and brackets "clause (*a*)" shall be substituted, and

(*c*) in clause (*d*), after the words "conferred on them by" the words "or under" shall be inserted

*Price 1 anna or 1½d* ]

MGIPC—L—IV 194—25 11 29—4 000

# ACT No XVII of 1929

[PASSED BY THE INDIAN LEGISLATURE ]

(*Received the assent of the Governor General on the 1st October 1929* )

**An Act further to amend the Guardians and Wards Act, 1890, for a certain purpose**

WHEREAS it is expedient further to amend the Guardians and Wards Act 1890 for the purpose hereinafter appearing It is hereby enacted as follows —

Short title

1 This Act may be called the Guardians and Wards (Amendment) Act, 1929

Insertion of new section 34A in Act VIII of 1890

2 After section 34 of the Guardians and Wards Act, 1890 (hereinafter referred to as the said Act), the following section shall be inserted namely —

Power to award remuneration for auditing accounts

> "34A When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (*c*) of section 34 or otherwise the Court may appoint a person to audit the accounts and may direct that remuneration for the work be paid out of the income of the property "

Amendment of section 50 Act VIII of 1890

3 In sub section (*1*) of section 50 of the said Act, after clause (*f*) the following clause shall be inserted, namely —

> "(*ff*) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them, "

*Price 1 anna or 1½d* ]

MCIPC—L—IV-87—13-8-30—1000

# ACT No XVIII OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October, 1929 )*

**An Act further to amend the Indian Succession Act, 1925, for certain purposes**

WHEREAS it is expedient further to amend the Indian Succession Act 1925, for the purposes hereinafter appearing It is hereby enacted as follows —

1 This Act may be called the Indian Succession (Amendment) Act, 1929 Short title

2 After clause (*b*) of section 2 of the Indian Succession Act, 1925 (hereinafter referred to as the said Act), the following clause shall be inserted, namely — Amendment of section 2, Act XXXIX of 1925

'(*bb*) 'District Judge' means the Judge of a principal Civil Court of original jurisdiction,

3 (*1*) Sub section (*1*) of section 57 of the said Act shall be renumbered as section 57, and after clause (*b*) and before the proviso the word "and" and the following clause shall be added, namely — Amendment of section 57, Act XXXIX of 1925

"(*c*) to all wills and codicils made by any Hindu, Buddhist Sikh or Jaina on or after the first day of January 1927 to which those provisions are not applied by clauses (*a*) and (*b*) "

(*2*) Sub section (*2*) of section 57 of the said Act shall be omitted

4 In sub section (*2*) of section 213 of the said Act, for the word "class" the word "classes and for the words and figures 'sub section (*1*) of section 57' the words, letters and figures clauses (*a*) and (*b*) of section 57' shall be substituted Amendment of section 213, Act XXXIX of 1925

5 The enactments specified in the Schedule are hereby repealed Repeals

THE SCHEDULE



*Price 1 anna or 1½d* ]

## THE SCHEDULE

ENACTMENTS REPEALED

*(See section 5)*

| Year | No | Short title |
| --- | --- | --- |
| 1926 | XXXVII | The Indian Succession (Amendment) Act 1926 |
| 1928 | XXI | The Indian Succession (Second Amendment) Act 1928 |



MGIPC—L—IX-88—14-8-30—1 000

# ACT No XIX of 1929

[Passed by the Indian Legislature ]

(*Received the assent of the Governor General on the 1st October 1929* )

**An Act to restrain the solemnisation of child marriages**

WHEREAS it is expedient to restrain the solemnisation of child marriages It is hereby enacted as follows —

1 (*1*) This Act may be called the Child Marriage Restraint Act, 1928 Short title extent and commencement

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(*3*) It shall come into force on the 1st day of April, 1930

2 In this Act, unless there is anything repugnant in the subject or context — Definitions

(*a*) " child " means a person who if a male, is under eighteen years of age and if a female is under fourteen years of age,

(*b*) " child marriage means a marriage to which either of the contracting parties is a child,

(*c*) " contracting party ' to a marriage means either of the parties whose marriage is thereby solemnised and

(*d*) " minor " means a person of either sex who is under eighteen years of age

3 Whoever, being a male above eighteen years of age and below twenty one, contracts a child marriage shall be punishable with fine which may extend to one thousand rupees Punishment for male adult below twenty one years of age marrying a child

4 Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both Punishment for male adult above twenty one years of age marrying a child

5 Whoever performs conducts or directs any child marriage shall be punishable with simple imprisonment which may Punishment for solemnising a child marriage



*Price 1 anna or 1½d* ]

may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Punishment for parent or guardian concerned in a child marriage.

6. (*1*) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised or negligently fails to prevent it from being solemnised shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.

(*2*) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

Imprisonment not to be awarded for offence under section 3.

7. Notwithstanding anything contained in section 25 of the General Clauses Act, 1897, or section 64 of the Indian Penal Code, a Court sentencing an offender under section 3 shall not be competent to direct that in default of payment of the fine imposed he shall undergo any term of imprisonment. X of 1897. XLV of 1860.

Jurisdiction under this Act.

8. Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1898, no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act. V of 1898.

Mode of taking cognizance of offences.

9. No Court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnisation of the marriage in respect of which the offence is alleged to have been committed.

Preliminary inquiries into offences under this Act.

10. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1898, either itself make an inquiry under section 202 of that Code or direct a Magistrate of the first class subordinate to it to make such inquiry. V of 1898.

Power to take security from complainant.

11. (*1*) At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the Court shall, except for reasons to be recorded in writing, require the complainant to execute a bond, with or without

without sureties for a sum not exceeding one hundred rupees as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure 1898 and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed

(2) A bond taken under this section shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, and Chapter XLII of that Code shall apply accordingly



HGIPO—L—IX-89—14-8-30—1,000

# ACT No XX OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 1st October 1929 )*

**An Act further to amend the Transfer of Property Act, 1882, for certain purposes**

WHEREAS it is expedient further to amend the Transfer of Property Act 1882 for the purposes hereinafter appearing It is hereby enacted as follows —

1 (*1*) This Act may be called the Transfer of Property (Amendment) Act 1929 — Short title and commencement

(2) It shall come into force on the first day of April 1930

2 In section 1 of the Transfer of Property Act 1882 (hereinafter referred to as the said Act) for the figures " 1877 " the figures " 1908 " shall be substituted — Amendment of section 1 Act IV of 188

3 In section 2 of the said Act the word " Hindu " and the words ' or Buddhist " shall be omitted — Amendment of section 2 Act IV of 188

4 In section 3 of the said Act for the last paragraph containing the definition of " notice " the following shall be substituted namely — — *Amendment of* section 3 Act IV of 188

" ' a person is said to have notice ' of a fact when he actually knows *that fact or when but for wilful abstention* from an inquiry or search which he ought to have made or gross negligence he would have known it

*Explanation I* —Where any transaction relating to im*moveable property* is required by law to be and has been effected by a registered instrument any person acquiring such property or any part of or share or interest in such property shall be deemed to have notice of such instrument as from the date of registration or if the instrument has been registered under sub section (2) of section 30 of the Indian Registration Act 1908 from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act

Provided



*Price 1 anna or 1½d* ]

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 and the rules made thereunder XVI of 1908.

(2) the instrument has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act

*Explanation II*.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title if any of any person who is for the time being in actual possession thereof

*Explanation III*.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material

Provided that if the agent fraudulently conceals the fact the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud

Amendment of section 4, Act IV of 1882. 5 In section 4 of the said Act for the figures "1877" the figures "1908" shall be substituted

Amendment of section 5, Act IV of 1882. 6 In section 5 of the said Act after the words "or to himself" the words "or to himself" shall be inserted and to the same section the following paragraph shall be added namely —

"In this section 'living person' includes a company or association or body of individuals whether incorporated or not but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by *companies associations or bodies of individuals*"

Amendment of section 6, Act IV of 1882. 7 In section 6 of the said Act, after clause (*d*) the following clause shall be inserted, namely —

(*dd*) A right to future maintenance in whatsoever manner arising secured or determined cannot be transferred

8 For

**8** For the second paragraph of section 11 of the said Act beginning with the words "Nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely —

Amendment of section 11, Act IV of 188

"Where any such direction has been made in respect of *one piece of immoveable property for the purpose of securing* the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

**9** In section 15 of the said Act, for the words "as regards the whole class" the following words shall be substituted, namely —

Amendment of section 15, Act IV of 188

"in regard to those persons only and not in regard to the whole class."

**10** For sections 16, 17 and 18 of the said Act the following sections shall be substituted, namely —

Substitution of new sections for sections 16, 17 and 18, Act IV of 188

"16 Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior interest

17 *(1)* Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

Direction for accumulation

*(a)* the life of the transferor, or

*(b)* a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(ii) the

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(iii) the preservation or maintenance of the property transferred,

and such direction may be made accordingly

Transfer in perpetuity for benefit of public

18 The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion knowledge, commerce, health safety, or any other object beneficial to mankind '

Amendment of section 39 Act IV of 188

11 In section 39 of the said Act,—

(a) the words " with the intention of defeating such right shall be omitted and for the words " of such intention ' the word ' thereof " shall be substituted and

(b) the *Illustration* shall be omitted

Amendment of section 40 Act IV of 188

12 In section 40 of the said Act, for the words " of the latter property or to compel its enjoyment in a particular manner,' the words " in a particular manner of the latter property ' shall be substituted

Amendment of section 43 Act IV of 188

13 In section 43 of the said Act after the word ' person the words " fraudulently or shall be inserted

Amendment of section 52 Act IV of 188

14 (*1*) In section 52 of the said Act,—

(a) for the words active prosecution ' the word pendency shall be substituted,

(b) for the words a contentious ' the word ' any ' shall be substituted and

(c) after the words ' suit or proceeding where they occur for the first time the words ' which is not collusive and shall be inserted

(*2*) To the same section the following *Explanation* shall be added namely —

*Explanation*—For the purposes of this section the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or

or discharge of such decree or order has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force "

**15** For section 53 of the said Act the following section shall be substituted namely — Substitution of new section for section 53 Act IV of 1882

53 (*1*) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed Fraudulent transfer

Nothing in this sub section shall impair the rights of a transferee in good faith and for consideration

Nothing in this sub section shall affect any law for the time being in force relating to insolvency

A suit instituted by a creditor (which term includes a decree holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of or for the benefit of all the creditors

(*2*) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee

For the purposes of this sub section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made "

**16** After section 53 of the said Act the following section shall be inserted namely — Insertion of new section 53A in Act IV of 1882.

53A Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty Part performance.

and the transferee has in part performance of the contract taken possession of the property or any part thereof or the transferee being already in possession continues in possession in part performance of the contract and has done some act in furtherance of the contract

and

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer that the transfer has not been completed in the manner precribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof"

Amendment of section 55 Act IV of 1882

17 In section 55 of the said Act,—

(a) in sub clause (a) of clause (1), after the word "property" the words "or in the seller's title thereto" shall be inserted,

(b) in sub clause (b) of clause (4), after the word "buyer" where it occurs for the second time the words "any transferee without consideration or any transferee with notice of the non payment," shall be inserted and after the words "on such amount or part" the words "from the date on which possession has been delivered" shall be added, and

(c) in sub clause (b) of clause (6) the words "with notice of the payment" shall be omitted

Substitution of new section for section 56 Act IV of 1882

18 For section 56 of the said Act the following section shall be substituted, namely —

Marshalling by subsequent purchaser

"56 If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage debt satisfied out of the property or properties not sold to him, so far as the same will extend but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties"

19 In

19 In section 58 of the said Act — Amendment of section 58, Act IV of 1882

(a) to clause (c) the following proviso shall be added, namely —

Provided that no such transaction shall be deemed to be a mortgage unless the condition is embodied in the document which effects or purports to effect the sale

(b) in clause (d)—

(i) after the words " Where the mortgagor delivers possession " the words " or expressly or by implication binds himself to deliver possession " shall be inserted

(ii) for the words " and to appropriate them ", the words " or any part of such rents and profits and to appropriate the same " shall be substituted and

(iii) after the words " or partly in lieu of interest " for the word " and " the word " or " shall be substituted and

(c) after clause (e) the following clauses shall be added, namely —

" (f) Where a person in any of the following towns namely the towns of Calcutta, Madras Bombay, Karachi, Rangoon Moulmein Bassein and Akyab and in any other town which the Governor General in Council may by notification in the Gazette of India, specify in this behalf delivers to a creditor or his agent documents *of title to immoveable property* with intent to create a security thereon the transaction is called a mortgage by deposit of title-deeds

(g) A mortgage which is not a simple mortgage a mortgage by conditional sale, an usufructuary mortgage an English mortgage or a mortgage by deposit of title deeds within the meaning of this section is called an anomalous mortgage "

20 In section 59 of the said Act — Amendment of section 59, Act IV of 1882

(a) after the words " a mortgage " where they first occur, the words " other than a mortgage by deposit of title deeds " shall be inserted,

(*b*) the third paragraph beginning with the words "Nothing in this section" and ending with the words "a security thereon" shall be omitted

Insertion of new section 59A in Act IV of 1882

Reference to mortgagors and mortgagees to include persons deriving title from them

21 *After section 59 of the said Act the following section* shall be inserted namely —

'59A Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively"

Amendment of section 60 Act IV of 1882

22 In section 60 of the said Act,—

(*a*) for the word "payable" the word "due" shall be substituted

(*b*) for the words "the mortgage deed, if any, to the mortgagor" the following words shall be substituted, namely —

to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee"

(*c*) for the word "order" the word "decree" shall be substituted, and

(*d*) after the words 'remaining due on the mortgage, except" the word "only" shall be inserted

Insertion of new section 60A and 60B in Act IV of 1882

Obligation to transfer to third party instead of retransference to mortgagor

23 After section 60 of the said Act the following sections shall be inserted namely —

60A (*1*) Where a mortgagor is entitled to redemption then on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee instead of re transferring the property, to assign the mortgage debt and transfer the mortgaged property to such third person as the mortgagor may direct, and the mortgagee shall be bound to assign and transfer accordingly

(*2*) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer

(*3*) The

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession

60B A mortgagor as long as his right of redemption subsists shall be entitled at all reasonable times at his request and at his own cost and on payment of the mortgagee s costs and expenses in this behalf to inspect and make copies or abstracts of or extracts from documents of title relating to the mortgaged property which are in the custody or power of the mortgagee " Right to inspection and production of documents

**24** For section 61 of the said Act and the *Illustration* thereto the following section shall be substituted namely — Substitution of new section for section 61 Act IV of 188

61 A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together " Right to redeem separately or simultaneously

**25** In section 62 of the said Act,— Amendment of section 62 Act IV of 188

(a) after the word " property ", where it first occurs the words " together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee ' shall be inserted

(b) for the words ' the interest of the principal money " the words ' or any part thereof a part only of the mortgage money " shall be substituted and

(c) for the words ' the principal money ", where they occur for the second time the words " the mortgage money or the balance thereof ' shall be substituted

**26** In section 63 of the said Act for the words at the same rate of interest " the words " with interest at the same rate as is payable on the principal or, where no such rate is fixed at the rate of nine per cent per annum shall be substituted Amendment of section 63 Act IV of 1

**27** After section 63 of the said Act the following section shall be inserted namely — Insertion of new section 63A in Act IV of 1

63A (1) Where mortgaged property in possession of the mortgagee has during the continuance of the mortgage been improved Improvements to mortgaged property

improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement, and the mortgagor shall not, save only in cases provided for in sub section (2) be liable to pay the cost thereof

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal or where no such rate is fixed at the rate of nine per cent per annum, and the profits, if any accruing by reason of the improvement shall be credited to the mortgagor "

Amendment of section 64 Act IV of 1882

**28** In section 64 of the said Act the words " for a term of years " shall be omitted

Amendment of section 65 Act IV of 1882

**29** In section 65 of the said Act,—

(a) in clause (d), the words " for a term of years " shall be omitted, and

(b) the words " Nothing in clause (c) or in clause (d), so far as it relates to the payment of future rent applies in the case of an usufructuary mortgage " shall be omitted

Insertion of new section 65A in Act IV of 1882

**30** After section 65 of the said Act the following section shall be inserted namely —

Mortgagor's power to lease.

' 65A (1) Subject to the provisions of sub section (2), a mortgagor while lawfully in possession of the mortgaged property shall have power to make leases thereof which shall be binding on the mortgagee

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage

(b) Every such lease shall reserve the best rent that can reasonably be obtained and no premium shall be paid or promised and no rent shall be payable in advance

(c) No such lease shall contain a covenant for renewal

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made

(e) In

(*e*) In the case of a lease of buildings whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years and the lease shall contain a covenant for payment of the rent and a condition of re entry on the rent not being paid within a time therein specified

(3) The provisions of sub section (*1*) apply only if and as far as a contrary intention is not expressed in the mort gage-deed, and the provisions of sub section (*2*) may be varied or extended by the mortgage deed and, as so varied and ex tended shall as far as may be operate in like manner and with all like incidents effects and consequences, as if such variations or extensions were contained in that sub-section "

**31** In section 67 of the said Act — Amendment of section 67 Act IV of 188

(*a*) for the word " payable " the word " due " shall be substituted

(*b*) for the words " an order ", wherever they occur, the words " a decree " shall be substituted and

(*c*) for clau e (*a*) the following clause shall be substituted namely —

" (*a*) to authorise any mortgagee other than a mort gagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale or "

**32** After section 67 of the said Act the following section shall be inserted namely — Insertion of new section 67A in Act IV of 188

67A A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67 and who sues to obtain such decree on any one of the mort gages shall in the absence of a contract to the contrary be bound to sue on all the mortgages in respect of which the mortgage money has become due " Mortgagee when bound to bring one suit on several mortgages

**33** For section 68 of the said Act the following section shall be substituted namely — Substitution of new section for section 68, Act IV of 1882

" 68 (*1*) The mortgagee has a right to sue for the mort gage money in the following cases and no others namely — Right to sue for mortgage-money

(*a*) where the mortgagor binds himself to repay the same

(*b*) where

(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so,

(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor,

(d) where the mortgagee being entitled to possession of the mortgaged property the mortgagor fails to deliver the same to him or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor

*Provided that, in the case referred to in clause (a),* a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage money

(2) Where a suit is brought under clause (a) or clause (b) of sub section (1) the Court may, at its discretion stay the suit and all proceedings therein notwithstanding any contract to the contrary until the mortgagee has exhausted all his available *remedies against the mortgaged property or what* remains of it unless the mortgagee abandons his security and if necessary re transfers the mortgaged property '

Amendment of section 69 Act IV of 1882

**34** In section 69 of the said Act —

(a) the first paragraph beginning with the words " A power conferred by the mortgage deed " and ending with the words " specify in this behalf ' shall be *numbered as sub section (1)*

(b) in the sub section so numbered —

(i) for the words A power conferred by the mortgage deed on the mortgagee or on any person on his behalf to sell or concur in selling in default of payment of the mortgage money, the mortgaged property, or any part thereof without the intervention *of the Court* is valid *in the following*

cases

cases and in no others, namely —' the following words shall be substituted, namely —

Notwithstanding anything contained in the Trustees and Mortgagees Powers Act, 1866 a mortgagee or any person acting on his behalf, shall subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage money, without the intervention of the Court, in the following cases and in no others, namely —",

(ii) in each of clauses (*b*) and (*c*), after the word ' where the words ' a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage deed, and shall be inserted, and

(iii) in clause (*c*), for the word ' is " the words " was, on the date of the execution of the mortgage deed,' shall be substituted, and after the words ' any other town" the words " or area" shall be inserted,

(*c*) the word But ' in the beginning of the second paragraph shall be omitted, and the said paragraph ending with the words " after becoming due ' shall be numbered as sub section (*2*) and clauses (1) and (2) of the said paragraph shall be lettered as (*a*) and (*b*), respectively,

(*d*) the third paragraph beginning with the words " When a sale has been made " and ending with the words " exercising the power " shall be numbered as sub section (*3*)

(*e*) the fourth paragraph beginning with the words The money which is received ' and ending with the words ' of the sale thereof ' shall be numbered as sub section (*4*)

(*f*) for the fifth paragraph beginning with the words " Nothing in the former part ' and ending with the words " comes into force the following sub-section shall be substituted, namely —

'(*5*) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882 ' and

(*g*) the

(*g*) the last paragraph beginning with the words 'The powers and provisions' and ending with the words "local official Gazette shall be omitted

Insertion of new section 69A in Act IV of 188

35 After section 69 of the said Act the following section shall be inserted, namely —

Appointment of receiver

'69A (*1*) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub section (*2*), be entitled to appoint by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof

(*2*) Any person who has been named in the mortgage deed and is willing and able to act as receiver may be appointed by the mortgagee

If no person has been so named or if all persons named are unable or unwilling to act or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees failing such agreement the mortgagee shall be entitled to apply to the Court for the appointment of a receiver and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor or by the Court on application made by either party and on due cause shown

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub section

(*3*) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor and the mortgagor shall be solely responsible for the receiver s acts or defaults unless the mortgage deed otherwise provides or unle s such acts or defaults are due to the improper intervention of the mortgagee

(*4*) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of and to give valid receipts accordingly for the same and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section

(*5*) A

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not

(6) The receiver shall be entitled to retain out of any money received by him for his remuneration and in satisfaction of all costs charges and expenses incurred by him as receiver a commission at such rate not exceeding five per cent on the gross amount of all money received as is specified in his appointment and if no rate is so specified, then at the rate of five per cent on that gross amount or at such other rate as the Court thinks fit to allow on application made by him for that purpose

(7) The receiver shall if so directed in writing by the mortgagee, insure to the extent if any to which the mortgagee might have insured and keep insured against loss or damage by fire out of the money received by him, the mortgaged property or any part thereof being of an insurable nature

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows namely —

(i) in discharge of all rents taxes, land revenue, rates and outgoings whatever affecting the mortgaged property,

(ii) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver

(iii) in payment of his commission and of the premiums on fire life or other insurances if any, properly payable under the mortgage deed or under this Act and the cost of executing necessary or proper repairs directed in writing by the mortgagee

(iv) in payment of the interest falling due under the mortgage,

(v) in or towards discharge of the principal money if so directed in writing by the mortgagee

and shall pay the residue, if any of the money received by him to the person who, but for the possession of the receiver would have been entitled to receive the income of which he is appointed receiver or who is otherwise entitled to the mortgaged property

(9) The

(*9*) The provisions of sub section (*1*) apply only if and as far as a contrary intention is not expressed in the mortgage deed and the provisions of sub sections (*3*) to (*8*) inclusive may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub sections

(*10*) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal A copy of such application shall be served upon and the hearing thereof may be attended by, such of the persons interested in the application as the Court may think fit

The costs of every application under this sub section shall be in the discretion of the Court

(*11*) In this section "the Court" means the Court which would have jurisdiction in a suit to enforce the mortgage "

Amendment of section 71 Act IV of 1882

**36** In section 71 of the said Act the words "for a term of years' shall be omitted

Amendment of section 2 Act IV of 188

**37** In section 72 of the said Act,—

(*a*) for the words ' When during the continuance of the mortgage the mortgagee takes possession of the mortgaged property he" the words "A mortgagee" shall be substituted,

(*b*) clause (*a*) shall be omitted,

(*c*) in clause (*b*) for the words "its preservation' the words "the preservation of the mortgaged property" shall be substituted,

(*d*) after the words "nine per cent per annum" the following proviso shall be inserted namely —

'Provided that the expenditure of money by the mortgagee under clause (*b*) or clause (*c*) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title ' and

(*e*) for

(e) for the words "a charge on the mortgaged property in addition to the principal money, with the same priority and with interest at the same rate" the following shall be substituted namely —

added to the principal money with interest at the same rate as is payable on the principal money or where no such rate is fixed, at the rate of nine per cent per annum

38 For section 73 of the said Act the following section shall be substituted namely — Substitution of new section for section 73, Act IV of 1882

73 (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property and such failure did not arise from any default of the mortgagee the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law Right to proceeds of revenue sale or compensation on acquisition

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of the amount due to the mortgagor as compensation

(3) Such claims shall prevail against all other claims except those of prior encumbrancers and may be enforced notwithstanding that the principal money on the mortgage has not become due"

39 Section 74 and section 75 of the said Act shall be omitted Omission of sections 74 and 75 Act IV of 1882

40 In section 76 of the said Act — Amendment of section 76 Act IV of 1882

(a) in clause (c), after the words "charges of a public nature" the words "and all rent" shall be inserted

(b) in clause (h) after the words "deducting the expenses" the words "properly incurred for the management of the property and the collection of rents and profits and the other expenses" shall be inserted

inserted, and the words "on the mortgage-money" shall be omitted, and

(c) in clause (i), the word "gross" shall be omitted, and after the words "as the case may be" the following shall be inserted namely —

and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property"

Omission of section 80 Act IV of 1882.

41 Section 80 of the said Act shall be omitted

Substitution of new section for section 81 Act IV of 1882

42 For section 81 of the said Act the following section shall be substituted, namely —

Marshalling securities

'81 If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties"

Amendment of section 82 Act IV of 1882

43 In section 82 of the said Act —

(a) for the first paragraph beginning with the words "Where several properties" and ending with the words "date of the mortgage" the following shall be substituted namely —

'Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date', and

(b) in the third paragraph for the word 'second" the word 'subsequent" shall be substituted

44 In

44 In section 83 of the said Act,— Amendment of section 83 Act IV of 188

(a) for the words "has become payable" the words "payable in respect of any mortgage has become due" shall be substituted,

(b) for the words "if then in his possession or power" the words "and all documents in his possession or power relating to the mortgaged property" shall be substituted

(c) after the word "mortgage deed" where it occurs for the second time, the words "and all such other documents" shall be inserted and

(d) the following paragraph shall be added after the words "such other person as aforesaid," namely —

"Where the mortgagee is in possession of the mortgaged property the Court shall, before paying to him the amount so deposited direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished"

45 In section 84 of the said Act,— Amendment of section 84 Act IV of 188

(a) after the words "from the date of the tender or" the words "in the case of a deposit, where no previous tender of such amount has been made," shall be inserted

(b) for the words "as the case may be" the following shall be substituted, namely —

"and the notice required by section 83 has been served on the mortgagee

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal", and

(c) after

(c) after the words "tender of the mortgage money" the words "and such notice has not been given before the making of the tender or deposit, as the case may be" shall be added

Substitution of new section for section 91 Act IV of 188

46 For section 91 of the said Act the following section shall be substituted, namely —

Persons who may sue for redemption

'91 Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely —

(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same,

(b) any surety for the payment of the mortgage debt or any part thereof or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property"

Insertion of new sections 92, 93 and 94 in Act IV of 188

Subrogation

47 After section 91 of the said Act the following sections shall be inserted namely —

"92 Any of the persons referred to in section 91 (other than the mortgagor) and any co mortgagor shall, on redeeming property subject to the mortgage have, so far as regards redemption foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee

The right conferred by this section is called the right of subrogation and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full

93 No

93 No mortgagee paying off a prior mortgage whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security and except in the case provided for by section 79 no mortgagee making a subsequent advance to the mortgagor whether with or without notice of an intermediate mortgage shall thereby acquire any priority in respect of his security for such subsequent advance — Prohibition of tacking

94 Where a property is mortgaged for successive debts to successive mortgagees a mesne mortgagee has the same rights against *mortgagees posterior to himself as he has against* the mortgagor — Right of mesne mortgagee

**48** For section 95 of the said Act the following sections shall be substituted namely — — Substitution of new sections for section 9 Act IV of 188

'95 Where one of several mortgagors redeems the mortgaged property he shall in enforcing his right of subrogation under section 92 against his co mortgagors be entitled to add *to the mortgage money recoverable from them such* proportion of the expenses properly incurred in such redemption as is attributable to their share in the property — Right of redeeming co mortgagor to expenses

96 The provisions hereinbefore contained which apply to a simple mortgage shall so far as may be, apply to a mortgage by deposit of title deeds " — Mortgage by deposit of *title-deeds*

**49** In section 98 of the said Act, for the words "a mortgage not being a simple mortgage a mortgage by conditional sale an usufructuary mortgage or an English mortgage or a combination of the first and third or the second and third, of such forms", the words 'an anomalous mortgage' shall be substituted — Amendment of section 98 Act IV of 1882

**50** In section 100 of the said Act — — Amendment of section 100 Act IV of 188

(*a*) for the words 'as to a mortgagor shall so far as may be apply to the owner of such property and the provisions of sections 81 and 82 shall so far as may be apply to the person having such charge the words "which apply to a simple mortgage shall, so far as may be, apply to such charge, shall be substituted and

(*b*) after the words "in the execution of his trust ' the following words shall be added namely —

" and save as otherwise expressly provided by any law for the time being in force no charge shall be enforced

enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge "

Substitution of new section for section 101 Act IV of 1882

51 For section 101 of the said Act the following section shall be substituted, namely —

No merger in case of subsequent encumbrance

101 Any mortgagee of, or person having a charge upon, immoveable property or any transferee from such mortgagee or charge holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of or person having a subsequent charge upon, the same property and no such subsequent mortgagee or charge holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge or otherwise than subject thereto "

Amendment of section 102 Act IV of 1882

52 In section 102 of the said Act,—

(a) for the words " Where the person or agent on whom such notice should be served cannot be found *in the* said district or is unknown " the words " Where no person or agent on whom such notice should be served can be found or is known " shall be substituted,

(b) after the words " and any notice served in compliance with such direction shall be deemed sufficient " the following proviso shall be inserted, namely —

Provided that in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made ",

(c) for the words " Where the person or agent to whom such tender should be made cannot be found within the said district or is unknown " the words " Where no person or agent to whom such tender should be made can be found or is known " shall be substituted, and

(d) for the words " in such Court as last aforesaid " the words " in any Court in which a suit might be brought for redemption of the mortgaged property " shall be substituted

53 In

53 In section 103 of the said Act — | Amendment of section 103 Act IV of 1882

(a) after the words "such notice may be served", the words "on or by" shall be inserted, and

(b) for the words and figures "Chapter XXXI of the Code of Civil Procedure" the words and figures "Order XXXII in the First Schedule to the Code of Civil Procedure 1908" shall be substituted

54 In section 106 of the said Act for the words "tendered or delivered either personally to the party who is intended to be bound by it", the following shall be substituted, namely — | Amendment of section 106 Act IV of 1882

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party"

55 In section 107 of the said Act, after the words "by delivery of possession", where they first occur the following paragraph shall be inserted namely — | Amendment of section 107 Act IV of 1882

"Where a lease of immoveable property is made by a registered instrument such instrument or, where there are more instruments than one each such instrument shall be executed by both the lessor and the lessee"

56 In section 108 of the said Act,— | Amendment of section 108 Act IV of 1882

(a) in clause (h)—

(i) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted, and

(ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards" shall be substituted, and

(b) in clause (o), after the words "or fell" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted

57 In clause (g) of section 111 of the said Act,— | Amendment of section 111 Act IV of 1882

(a) the words "or the lease shall become void" shall be omitted,

(b) after the words "title in himself" the following shall be inserted, namely —

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event"

(c) for

(c) for the words "either case" the words "any of these cases" shall be substituted, and

(d) for the words "does some act showing" the words "gives notice in writing to the lessee of" shall be substituted

Insertion of new section 114A in Act IV of 188

**58** After section 114 of the said Act the following section shall be inserted, namely —

Relief against forfeiture in certain other cases

114A Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(a) specifying the particular breach complained of, and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach,

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy

Nothing in this section shall apply to an express condition against the assigning under letting parting with the possession or disposing of the property leased, or to an express condition relating to forfeiture in case of non payment of rent

Substitution of new section for section 119 Act IV of 188

**59** For section 119 of the said Act the following section shall be substituted, namely —

Right of party deprived of thing received in exchange

119 If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration

Amendment of section 128 Act IV of 188

**60** In section 128 of the said Act after the words "debts due by" the words "and liabilities of" shall be inserted

Amendment of section 129 Act IV of 188

**61** In section 129 of the said Act, the words "or, save as provided by section 123 any rule of Hindu or Buddhist law" shall be omitted

**62** In

62 In section 130 of the said Act — Amendment of section 130 — Act IV of 1882

(a) after the words "The transfer of an actionable claim" the words "whether with or without consideration" shall be inserted and

(b) the words "and notwithstanding anything contained in section 123" shall be omitted

63 Nothing in any of the following provisions of this Act namely sections 3 4 9 10 15 18 19 27 30 clause (c) of section 31 sections 32 33 34 35 46 52 55 57 58 59 61 and 62 shall be deemed in any way to affect— Saving clause

(a) the terms or incidents of any transfer of property made or effected before the first day of April 1930

(b) the validity invalidity effect or consequences of anything already done or suffered before the aforesaid date

(c) any right title obligation or liability already acquired accrued or incurred before such date or

(d) any remedy or proceeding in respect of such right title obligation or liability and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April 1930 in any proceeding pending in a Court on that date and any such remedy and any such proceeding as is herein referred to may be enforced instituted or continued as the case may be as if this Act had not been passed



MGIPC—L—IX 129— 11 29—

# ACT No XXI OF 1929

[PASSED BY THE INDIAN LEGISLATURE ]

*(Received the assent of the Governor General on the 4th October, 1929 )*

**An Act to supplement the Transfer of Property (Amendment) Act, 1929**

WHEREAS by reason of the passing of the Transfer of Property (Amendment) Act 1929, it is expedient that certain amendments should be made in certain other enactments, It is hereby enacted as follows —

Short title and commencement

1 (*1*) This Act may be called the Transfer of Property (Amendment) Supplementary Act, 1929

(*2*) It shall come into force on the first day of April, 1930

Amendment of section 8 Act III of 1874

2 For the proviso to section 8 of the Married Women's Property Act 1874 the following proviso shall be substituted namely —

"Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein or

(*b*) affect the liability of a husband for debts contracted by his wife's agency expressed or implied "

Insertion of new section 27A in Act I of 1877

3 After section 27 of the Specific Relief Act 1877 the following section shall be inserted namely —

Specific performance in case of part performance of contract to lease.

27A Subject to the provisions of this Chapter where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract though required to be registered



*Price As 2 or 3d ]*

registered has not been registered, sue the other for specific performance of the contract if —

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract, and

(*b*) where specific performance is claimed by the lessee, he has in part performance of the contract taken possession of the property, or, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof

This section applies to contracts to lease executed after the first day of April, 1930

Substitution of new rules for rules 2 to 8 Order XXXIV Schedule I Act V of 1908

4 In Order XXXIV in the First Schedule to the Code of Civil Procedure 1908, for rules 2 to 8 the following rules shall be substituted namely — V of 19

Preliminary decree in foreclosure suit

2 (*1*) In a suit for foreclosure if the plaintiff succeeds, the Court shall pass a preliminary decree—

(*a*) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

(*i*) principal and interest on the mortgage

(*ii*) the costs of suit if any awarded to him, and

(*iii*) other costs charges and expenses properly incurred by him up to that date in respect of his mortgage security together with interest thereon, or

(*b*) declaring the amount so due at that date and

(*c*) directing—

(*i*) that if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (*a*) or from the date on which such amount is declared in Court under clause (*b*) as the case may be and thereafter pays such amount as may be adjudged due in respect of subsequent costs charges and expenses as

as provided in rule 10 together with subsequent interest on such sums respectively as provided in rule 11 the plaintiff shall deliver up to the defendant or to such person as the defendant appoints all documents in his possession or power relating to the mortgaged property and shall if so required re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrance created by the plaintiff or any person claiming under him or where the plaintiff claims by derived title by those under whom he claims and shall also if necessary put the defendant in possession of the property and

(ii) that if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed or the defendant fail to pay within such time as the Court may fix the amount adjudged due in respect of subsequent costs charges expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property

(2) The Court may on good cause shown and upon terms to be fixed by the Court from time to time at any time before a final decree is passed extend the time fixed for the payment of the amount found or declared due under sub rule (1) or of the amount adjudged due in respect of subsequent costs charges expenses and interest

(3) Where in a suit for foreclosure subsequent mortgagees or persons deriving title from or subrogated to the rights of any such mortgagee are joined as parties the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No 9 or Form No 10 as the case may be of Appendix D with such variations as the circumstances of the case may require

Final decree in foreclosure

3 (1) Where before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed the defendant makes payment into Court of all amounts due from him under sub rule (1) of rule 2 the Court shall on application

application made by the defendant in this behalf, pass a final decree—

(*a*) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and if necessary,—

(*b*) ordering him to re transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and also if necessary —

(*c*) ordering him to put the defendant in possession of the property

(*2*) Where payment in accordance with sub rule (*1*) has not been made, the Court shall, on application made by the plaintiff in this behalf pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property

(*3*) On the passing of a final decree under sub rule (*2*), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged

**Preliminary decree in suit for sale**

4 (*1*) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (*a*) (*b*) and (*c*) (*i*) of sub rule (*1*) of rule 2, and further directing that in default of the defendant paying as therein mentioned the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs charges, expenses and interest and the balance if any be paid to the defendant or other persons entitled to receive the same

(*2*) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed extend the time fixed for the payment

payment of the amount found or declared due under sub rule (1) or of the amount adjudged due in respect of subsequent costs charges expenses and interest

(3) In a suit for foreclosure in the case of an anomalous mortgage if the plaintiff succeeds the Court may at the instance of any party to the suit or of any other person interested in the mortgage security or the right of redemption pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms — Power to decree sale in foreclosure suit

(4) Where in a suit for sale or a suit for foreclosure in which sale is ordered subsequent mortgagees or persons deriving title from or subrogated to the rights of any such mortgagees are joined as parties the preliminary decree referred to in sub rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No 9 Form No 10 or Form No 11 as the case may be of Appendix D with such variations as the circumstances of the case may require

5 (1) Where on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub rule (3) of this rule the defendant makes payment into Court of all amounts due from him under sub rule (1) of rule 4 the Court shall, on application made by the defendant in this behalf pass a final decree or if such decree has been passed an order— — Final decree in suit for sale.

(a) ordering the plaintiff to deliver up the document referred to in the preliminary decree

and if necessary —

(b) ordering him to transfer the mortgaged property as directed in the said decree

and also if necessary,—

(c) ordering him to put the defendant in possession of the property

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub rule (3) of this rule the Court shall not pass an order under sub-rule (1) of this rule unless the defendant in addition to the amount

amount

amount mentioned in sub rule (*1*), deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser

Where such deposits has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him together with a sum equal to five per cent thereof

(*3*) Where payment in accordance with sub rule (*1*) has not been made, the Court shall on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale be dealt with in the manner provided in sub rule (*1*) of rule 4

**Recovery of balance due on mortgage in suit for sale**

6 Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff the Court on application by him may if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance

**Preliminary decree in redemption suit.**

7 (*1*) In a suit for redemption if the plaintiff succeeds the Court shall pass a preliminary decree—

(*a*) ordering that an account be taken of what was due to the defendant at the date of such decree for—

(*i*) principal and interest on the mortgage,

(*ii*) the costs of suit if any, awarded to him, and

(*iii*) other costs charges and expenses properly incurred by him up to that date, in respect of his mortgage security together with interest thereon, or

(*b*) declaring the amount so due at that date and

(*c*) directing—

(*i*) that if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (*a*), or from the date on which such amount is declared in Court under clause (*b*) as the case may be and thereafter pays such amount as may be adjudged due in respect of

of subsequent costs charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property and shall if so required re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him or where the defendant claims by derived title by those under whom he claims, and shall also if necessary put the plaintiff in possession of the property and

(ii) that if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed or the plaintiff fails to pay within such time as the Court may fix the amount adjudged due in respect of subsequent costs charges expenses and interest the defendant shall be entitled to apply for a final decree—

(a) in the case of a mortgage other than a usufructuary mortgage a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid that the plaintiff be debarred from all right to redeem the property

(2) The Court may, on good cause shown and upon terms to be fixed by the Court from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be extend the time fixed for the payment of the amount found or declared due under sub rule (1) or of the amount adjudged due in respect of subsequent costs, charges expenses and interest

8 (1) Where before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of  Final decree in redemption suit.

of a final decree passed under sub rule (*3*) of this rule the plaintiff makes payment into Court of all amounts due from him under sub rule (*1*) of rule 7 the Court shall, on application made by the plaintiff in this behalf, pass a final decree or if such decree has been passed, an order—

(*a*) ordering the defendant to deliver up the documents referred to in the preliminary decree,

and if necessary —

(*b*) ordering him to re transfer at the cost of the plaintiff the mortgaged property as directed in the said decree

and also if necessary —

(*c*) ordering him to put the plaintiff in possession of the property

(*2*) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub rule (*3*) of this rule the Court shall not pass an order under sub rule (*1*) of this rule unless the plaintiff in addition to the amount mentioned in sub rule (*1*) deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser

Where such deposit has been made the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him, together with a sum equal to five per cent thereof

(*3*) Where payment in accordance with sub rule (*1*) has not been made the Court shall on application made by the defendant in this behalf —

(*a*) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7 pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and also if necessary ordering the plaintiff to put the defendant in possession of the mortgaged property or

(*b*) in the case of any other mortgage not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into

into Court and applied in payment of what is found due to the defendant and the balance if any be paid to the plaintiff or other persons entitled to receive the same

5 In Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 after rule 8 the following rule shall be inserted namely — Insertion of new rule 8A in Order XXXIV Schedule I Act V of 1908

8A Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant the Court on application by him, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold pass a decree for such balance Recovery of balance due on mortgage in suit for redemption

6 In Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 for rules 10 and 11 the following rules shall be substituted namely — Substitution of new rules for rules 10 and 11 of Order XXXIV Schedule I Act V of 1908

10 In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure sale or redemption the Court shall unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage money such costs of the suit and other costs charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure sale or redemption up to the time of actual payment Costs of mortgagee subsequent to decree

11 In any decree passed in a suit for foreclosure, sale or redemption where interest is legally recoverable the Court may order payment of interest to the mortgagee as follows, namely — Payment of interest.

(*a*) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—

(*i*) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal or where no such rate is fixed at such rate as the Court deems reasonable,

(*ii*) on the amount of the costs of the suit awarded to the mortgagee —at such rate as the Court deems reasonable from the date of the preliminary decree and

(*iii*) on

(iii) on the amount adjudged due to the mortgagee for costs charges and expenses properly incurred by the mortgagee in respect of the mortgage security up to the date of the preliminary decree and added to the mortgage money —at the rate agreed between the parties, or failing such rate at the same rate as is payable on the principal or failing both such rates at nine per cent per annum and

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause, and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs charges and expenses as may be payable under rule 10 "

Substitution of new rule for rule 15 Order XXXIV Schedule I Act V of 1908

7 In Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 for rule 15 the following rule shall be substituted, namely — V

Mortgages by the deposit of title-deeds and charges

15 All the provisions contained in this Order which apply to a simple mortgage shall so far as may be, apply to a mortgage by deposit of title deeds within the meaning of section 58 and to a charge within the meaning of section 100 of the Transfer of Property Act 1882 " IV c

Substitution of new Forms for Forms 3 to 11 in Appendix D Schedule I Act V of 1908

8 For Forms 3 to 11 in Appendix D to the First Schedule to the Code of Civil Procedure 1908 the Forms set forth in V of the Schedule shall be substituted

Amendment of Act IX of 1908

9 In article No 132 in the First Division of the First Schedule to the Indian Limitation Act 1908 the following IX clause shall be added after clause (b) of the Explanation namely —

" and

(c) advances secured by mortgage by deposit of title deeds "

Amendment of Act XVI of 1908

10 (1) In section 17 of the Indian Registration Act XVI 1908 —

(a) after clause (d) of sub section (1) the following clause shall be added, namely —

(e) non testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operate

operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property ", and

(b) in clause (v) of sub-section (2) for the words " and any award " the words " except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding " shall be substituted

(2) In section 48 of the same Act after the words " or followed by delivery of possession " the following words shall be added, namely —

" and the same constitutes a valid transfer under any law for the time being in force

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property "

(3) In section 49 of the same Act—

(a) after the word and figures " section 17 " the words " or by any provision of the Transfer of Property Act, 1882 " shall be inserted and

(b) to that section the following proviso shall be added, namely —

" Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument "

1877 · 1882 · Act I 1914

11 In the Hindu Transfers and Bequests Act, 1914 for sections 3, 4 and 5 the following sections shall be substituted, namely — *Amendment of Madras Act I of 1914*

" 3 Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *Disposition for the benefit of person not in existence.*

transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not born at the date of such disposition

Limitations and conditions

4 The limitations and provisions referred to in section 3 shall be the following, namely —

(*a*) in respect of dispositions by transfers *inter vivos*, those contained in Chapter II of the Transfer of Property Act, 1882 and IV of

(*b*) in respect of dispositions by will, those contained in sections 113 114 115 and 116 of the Indian Succession Act 1925 ' XXX 19 5

Amendment of Act XV of 1916

**12** (*1*) In section 3 of the Hindu Disposition of Property Act, 1916,— XV o

(*a*) in clause (*a*), for the words and figures " sections 13, 14 and 20 " the word and figure Chapter II ' shall be substituted, and

(*b*) in clause (*b*) for the words and figures " sections 100 and 101 of the Indian Succession Act, 1865 " the words and figures " sections 113, 114, 115 and 116 of the Indian Succession Act 1925 " shall be substituted X of 1 XXX 19 5

(*2*) Section 4 of the same Act shall be omitted

Amendment of Act VIII of 19 1

**13** In the Hindu Transfers and Bequests (City of Madras) Act 1921 for sections 3 4 and 5 the following sections shall be substituted namely — VIII

Disposition for the benefit of p rso not in existence

3 Subject to the limitations and provisions specified in this Act no disposition of property by a Hindu whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not born at the date of such disposition

Limitati ns and conditions

4 The limitations and provisions referred to in section 3 shall be the following namely —

(*a*) in respect of disposition by transfers *inter vivos* those contained in Chapter II of the Transfer of Property Act, 1882 and IV of 1

(*b*) in respect of dispositions by will those contained in sections 113 114 115 and 116 of the Indian Succession Act 1925 ' XXXI 19 5

**14** (*1*) In

14 (*1*) In section 115 of the Indian Succession Act 1925 — Amendment of Act XXXIX of 1925

(*a*) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted

(*b*) in *Illustration* (*i*) for the words "and as it is given to all his children as a class it is not good as to any division of that class but is wholly void" the following words shall be substituted namely —

"and in regard to those who do not attain the age of 25 within 18 years after A's death but is operative in regard to the other children of A" and

(*c*) in *Illustration* (*ii*) for the words "The mention of B C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted namely —

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class it is not wholly void It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death"

(*2*) For section 116 of the same Act the following section shall be substituted namely —

"116 Where by reason of any of the rules contained in sections 113 and 114 any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void" Req tak fu t q

(*3*) For section 117 of the same Act and the *Illustration* thereto the following section shall be substituted namely —

"117 (*1*) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator such direction shall save as hereinafter provided be void to the extent to which the period during which the accumulation is directed exceeds Effect of direction for accumulation.

the

the aforesaid period and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or any other person taking any interest under the will or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will or

(iii) the preservation or maintenance of any property bequeathed

and such direction may be made accordingly "

(4) In Schedule III to the same Act after the figures and comma "116," the figures and comma "117," shall be inserted

avings. **15** (1) Save as provided in sub section (2), nothing in this Act shall be deemed to affect—

(a) the terms or incidents of any transfer or disposition of property made or effected before the first day of April 1930

(b) the validity, invalidity effect or consequences of anything already done or suffered before the aforesaid date

(c) any right title obligation or liability already acquired accrued or incurred before such date,

(d) any remedy or proceeding in respect of such right, title, obligation or liability or

(e) anything done in the course of any proceeding pending in any Court on the aforesaid date

and any such remedy or proceeding may be enforced instituted or continued as the case may be as if this Act had not been passed

(2) Notwithstanding anything contained in section 9 of this Act in the Presidency of Bombay and such other territories as the Governor General in Council may by notification in the Gazette of India specify in this behalf a suit by a mortgagee for foreclosure or sale on a mortgage by deposit of title-deeds

title lends to be instituted within two years from the date of the commencement of this Act or within sixty years from the date when the money secured by the mortgage became due whichever period expires first and no such suit instituted within the said period of sixty years and pending at the date of the commencement of this Act either in a Court of first instance or of appeal shall be dismissed on the ground that the twelve years rule of limitation is applicable

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## SCHEDULE

(See section 8)

### FORM No 3

*Preliminary decree for foreclosure*

(Order XXXIV rule 2 – Where accounts are directed to be taken )

(TITLE )

This suit coming on this day, etc It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following —

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable),

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest thereon (such interest to be computed at the

the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum),

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed

2 And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (*iii*) together with interest thereon, and the balance if any, shall be added to the mortgage money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that upon such report of the Commissioner being received it shall be confirmed and countersigned subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

(*i*) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court such sum as the Court shall find due, and the sum of Rs for the costs of the suit awarded to the plaintiff

(*ii*) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10, together with

with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant or to such person as he appoints, and the plaintiff shall, if so required, re convey or re transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plain tiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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FORM No 3A

*Preliminary decree for foreclosure*

(Order XXXIV, rule 2 —Where the Court declares the amount due )

(TITLE )

This suit coming on this day, etc It is hereby declared that the amount due to the plaintiff on his mortgage mentioned

mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs for the costs of this suit awarded to the plaintiff making in all the sum of Rs

2 And it is hereby ordered and decreed as follows —

(*i*) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court of the said sum of Rs ,

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required re convey or re transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule

Schedule annexed hereto and shall if so required deliver up to the plaintiff quiet and peaceable possession of the said property and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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## FORM No 4

*Final decree for foreclosure*

(Order XXXIV rule 3)

(TITLE)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned * [and (*if the defendant be in possession of the said mortgaged property*) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property]

2 And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished

FORM

* Words not required to be deleted

## FORM No 5

*Preliminary decree for sale*

(Order XXXIV rule 4 —Where accounts are directed to be taken )

(TITLE )

This suit coming on this day, etc , It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following —

(*i*) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable),

(*ii*) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received,

(*iii*) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security, together with interest thereon (such interest to be computed at the rate agreed between the parties or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum),

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed

2 And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above together with interest thereon, shall first be adjusted

adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon and the balance, if any shall be added to the mortgage money or as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received it shall be confirmed and countersigned subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs for the costs of the suit awarded to the plaintiff,

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the defendant or to such person as he appoints and the plaintiff shall, if so required re convey or re transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property

5 And

5 And it is hereby further ordered and decreed that, in default of payment as aforesaid the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold, and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property

6 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 and that the balance, if any shall be paid to the defendant or other persons entitled to receive the same

7 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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FORM No 5A

*Preliminary decree for sale*

(Order XXXIV rule 4 —When the Court declares the amount due )

(TITLE )

This suit coming on this day etc , It is hereby declared that the amount due to the plaintiff on the mortgage mentioned

mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon and the sum of Rs for the costs of the suit awarded to the plaintiff making in all the sum of Rs

2 And it is hereby ordered and decreed as follows —

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs ,

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant or to such person as he appoints, and the plaintiff shall if so required, re convey or re transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required deliver up to the defendant quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that in default of payment as aforesaid the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents

ments in his possession or power relating to the mortgaged property

4 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any shall be paid to the defendant or other persons entitled to receive the same

5 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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FORM No 6

*Final decree for sale*

(Order XXXIV, rule 5 )

(TITLE )

Upon reading the preliminary decree passed in this suit on the *day of* and further orders (if any) dated the day of and the application of the plaintiff dated the *day of* *for a* final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not

not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property

2 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this *application* and such costs, charges, and expenses *as* may be payable under rule 10 together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same

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FORM No 7

*Preliminary decree for redemption where on default of payment by mortgagor a decree for foreclosure is passed*

(Order XXXIV, rule 7 —Where accounts are directed to be taken )

(TITLE )

This suit coming on this day etc It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following —

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed at six per cent per annum *or* at such rate as the Court deems reasonable)

(ii) an

(*ii*) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received

(*iii*) an account of all sums of money properly incurred by the defendant up to this date for costs charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum),

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed

**2** It is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon shall be adjusted against any sums paid by the defendant under clause (*iii*) together with interest thereon, and the balance if any, shall be added to the mortgage money or, as the case may be be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

**3** And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

**4** And

4 And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court such sum as the Court shall find due and the sum of Rs for the costs of the suit awarded to the defendant,

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall if so required re convey or re transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required deliver up to the plaintiff quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall if so required deliver up to the defendant quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

SCHEDULE

*Description of the mortgaged property*

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## FORM No 7A

*Preliminary decree for redemption where on default of payment by mortgagor a decree for sale is passed*

(Order XXXIV, rule 7 —Where accounts are directed to be taken )

(TITLE )

This suit coming on this day, etc , It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following —

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed at six per cent per annum or at such rate as the Court deems reasonable),

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received,

(iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates at nine per cent per annum),

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or

or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed

2 And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the          day of                    , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the          day of                    or any later date up to which time for payment may be extended by the Court such sum as the Court shall find due and the sum of Rs                    for the costs of the suit awarded to the defendant,

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents

documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re convey or re transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property, *and on such application being made* the mortgaged property or a sufficient part thereof shall be directed to be sold and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property

6 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the *Code of Civil Procedure, 1908* and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same

7 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance and that the parties are at liberty to apply to the Court from time to time as they may have *occasion, and on such application or* otherwise the Court may give such directions as it thinks fit

SCHEDULE

SCHEDULE

*Description of the mortgaged property*

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FORM No 7B

*Preliminary decree for redemption where on default of payment by mortgagor a decree for foreclosure is passed*

(Order XXXIV rule 7 —Where the Court declares the amount due )

(TITLE )

This suit coming on this day, etc , It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal the sum of Rs for interest on the said principal, the sum of Rs for costs charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage security together with interest thereon and the sum of Rs for the costs of the suit awarded to the defendant, making in all the sum of Rs

2 And it is hereby ordered and decreed as follows —

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff

or

or to such person as he appoints, and the defendant shall, if so required, re convey or re transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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FORM No 7C

*Preliminary decree for redemption where on default of payment by mortgagor a decree for sale is passed*

(Order XXXIV rule 7 —Where the Court declares the amount due )

(TITLE )

This suit coming on this day, etc , It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage security together with interest thereon, and the sum

sum of Rs for the cost of this suit awarded to the defendant making in all the sum of Rs

2 And it is hereby ordered and decreed as follows —

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints and the defendant shall, if so required re convey or re transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid the defendant may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold, and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property

4 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under

under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any shall be paid to the plaintiff or other persons entitled to the same

5 And it is hereby further ordered and decreed that if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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FORM No 7D

*Final decree for foreclosure in a redemption suit on default of payment by mortgagor*

(Order XXXIV, rule 8)

(TITLE)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of , and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely

absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned* [and (*if the plaintiff be in possession of the said mortgaged property*) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property ]

2 And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished

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FORM No 7F

*Final decree for sale in a redemption suit on default of payment by mortgagor*

(Order XXXIV rule 8 )

(TITLE )

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the defendant dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property

2 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs

* Words not required to be deleted

costs of this application and such costs, charges and expenses as may be payable under rule 10 together with the subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same

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FORM No 7F

*Final decree in a suit for foreclosure, sale or redemption where the mortgagor pays the amount of the decree*

(Order XXXIV, rules 3, 5 and 8)

(TITLE)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or the same being a person entitled to redeem has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of It is hereby ordered and decreed that —

(i) the mortgagee do execute a deed of reconveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor *[or, as the case may be who has redeemed the property] or an acknowledgment of the payment of the amount due in his favour

(ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit

And it is hereby further ordered and decreed that upon the mortgagee executing the deed of reconveyance or acknowledgment in the manner aforesaid —

(i) the said sum of Rs be paid out of Court to the mortgagee

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor *[or the person making the payment] and the mortgagee do when so required concur in registering at the cost of

* Words not required to be deleted

of the mortgagor [or other person making the payment] the said deed of re-conveyance or the acknowledgment in the office of the Sub-Registrar of and

(iii) [if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor *[or such person as aforesaid who has made the payment].

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## FORM No. 8

*Decree against mortgagor personally for balance after the sale of the mortgaged property.*

(Order XXXIV, rules 6 and 8A.)

(Title.)

Upon reading the application of the mortgagee (the plaintiff or defendant as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs ,

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant as the case may be) personally.

It is hereby ordered and decreed as follows:—

That the mortgagor (plaintiff or defendant as the case may be) do pay to the mortgagee (defendant or plaintiff as the case may be) the said sum of Rs with further interest at the rate of six per cent per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum and the costs of this application.

FORM

*Words not required to be deleted.

## FORM No 9

*Preliminary decree for foreclosure or sale*

[Plaintiff 1st Mortgagee

*vs*

Defendant No 1 Mortgagor

Defendant No 2 2nd Mortgagee ]

(Order XXXIV rules 2 and 4 )

(TITLE )

The suit coming on this day, etc , It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage security with interest thereon and the sum of Rs for the costs of this suit awarded to the plaintiff, making in all the sum of Rs

*(Similar declarations to be introduced with regard to the amount due to defendant No 2 in respect of his mortgage if the mortgage money due thereunder has become payable at the date of the suit )*

**2** It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No 2 *[or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively —]

**3** And it is hereby ordered and decreed as follows —

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to the plaintiff, and

(b) that defendant No 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to defendant No 2 and

(ii) that

* Words not required to be deleted

(ii) that on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (*a*) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due *in respect of such costs of the suit and such* cost charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No (who has made the payment), or to such person as he appoints and the plaintiff shall if *so required re convey or re* transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required deliver up to the defendant No (who has made the payment) quiet and peaceable possession of the said property

(*Similar declarations to be introduced, if defendant No 1 pays the amount found or declared to be due to defendant No 2 with such variations as may be necessary having regard to the nature of his mortgage* )

4 And it is hereby further ordered and decreed that in default of payment as aforesaid of the amount due to the plaintiff the plaintiff shall be at liberty to apply to the Court for a final decree—

(i) *[*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage deed is foreclosure and not sale*] that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto

* Words not required to be deleted

hereto and shall if so required deliver to the plaintiff quiet and peaceable possession of the said property or

(ii) *[*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property, and

(iii) *[*in the case where a sale is ordered under clause 4 (ii) above*] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 and that the balance if any, shall be applied in payment of the amount due to defendant No 2, and that if any balance be left, it shall be paid to the defendant No 1 or other persons entitled to receive the same and

(iv) that if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No 2 the plaintiff or defendant No 2 or both of them as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amount remaining due to them respectively

5 And it is hereby further ordered and decreed—

(a) that if defendant No 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff

* Words not required to be deleted

that but defendant No 1 makes default in the payment of the said amount defendant No 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

*[(i) that defendant No 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall if so required deliver up to defendant No 2 quiet and peaceable possession of the said property ] or

*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No 2 shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property ]

and (*b*) that (on the application of defendant No 2 such a final decree for foreclosure is passed) that the whole of the liability of defendant No 1 arising from the plaintiff's mortgage or from the mortgage of defendant No 2 or from this suit shall be deemed to have been discharged and extinguished

6 And it is hereby further ordered and decreed *[*in the case where a sale is ordered under clause 5 above*]—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount and that the balance if any shall then be applied in payment of the amount adjudged due to defendant No 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may

* Words not required to be deleted

may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No 2 under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No 1 or other persons entitled to receive the same, and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No 2's mortgage, defendant No 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amount of the balance

7 And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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FORM No 10

*Preliminary decree for redemption of prior mortgage and foreclosure or sale on subsequent mortgage*

| | | |
|---|---|---|
| [Plaintiff | | 2nd Mortgagee |
| | *vs* | |
| Defendant No 1 | | Mortgagor |
| Defendant No 2 | | 1st Mortgagee ] |

(Order XXXIV rules 2 4 and 7 )

(TITLE )

The suit coming on this day etc It is hereby declared that the amount due to defendant No 2 on the mortgage mentioned in the plaint calculated up to this day

day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs charges and expenses (other than the costs of the suit) properly incurred by defendant No 2 in respect of the mortgage security with interest thereon and the sum of Rs for the costs of this suit awarded to defendant No 2 making in all the sum of Rs

*(Similar declarations to be introduced with regard to the amount due from defendant No 1 to the plaintiff in respect of his mortgage if the mortgage money due thereunder has become payable at the date of the suit )*

2 It is further declared that defendant No 2 is entitled to payment of the amount due to him in priority to the plaintiff *[or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively —]

3 And it is hereby ordered and decreed as follows —

(i) (a) that the plaintiff or defendant No 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to defendant No 2 and

(b) that defendant No 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to the plaintiff and

(ii) that, on payment of the sum declared due to defendant No 2 by the plaintiff and defendant No 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 defendant No 2 shall bring into Court all documents

* Words not required to be deleted

ments in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment) or to such person as he appoints and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

*(Similar declarations to be introduced if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)*

4. And it is hereby further ordered and decreed that in default of payment as aforesaid of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

(i) *[*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale*] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or

(ii) [*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property; and

(iii) *[in

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*Words not required [illegible]

required, deliver up to the plaintiff quiet and peaceable possession of the said property ] or

*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property ,]

and (*b*) (if on the application of defendant No 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No 1 arising from the plaintiff's mortgage or from the mortgage *of defendant No 2 or from this suit* shall be deemed to have been discharged and extinguished

6 And it is hereby further ordered and decreed (*in the case where a sale is ordered under clause 5 above*)—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount, and that the balance if any shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs charges and expenses as may be payable to the plaintiff under rule 10 together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 and that the balance if any shall be paid to defendant No 1 or other persons entitled to receive the same and

(ii) that if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No 2's mortgage or the plaintiff's

*Words not required to be deleted

tiff's mortgage defendant No 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amount of the balance

7 And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

---

## FORM No 11

*Preliminary decree for sale*

[Plaintiff Sub or derivative mortgagee

*vs*

Defendant No 1 Mortgagor

Defendant No 2 Original mortgagee ]

(Order XXXIV, rule 4 )

(TITLE )

This suit coming on this day etc It is hereby declared that the amount due to defendant No 2 on his mortgage calculated up to this day of is the sum of Rs for principal the sum of Rs for interest on the said principal the sum of Rs for costs charges and expenses (other than the costs of the suit) in respect of the mortgage security together with interest thereon and the sum of Rs for the costs of the suit awarded to defendant No 2 making in all the sum of Rs

(*Similar declarations to be introduced with regard to the amount due from defendant No 2 to the plaintiff in respect of his mortgage* )

2 And it is hereby ordered and decreed as follows —

(i) that defendant No 1 do pay into Court *on or before* the said day of *or any* [illegible]

later date up to which time for payment may be extended by the Court the said sum of Rs due to defendant No 2

*(Similar declarations to be introduced with regard to the amount due to the plaintiff defendant No 2 being at liberty to pay such amount )*

(ii) that on payment of the sum declared due to defendant No 2 by defendant No 1 in the manner prescribed in clause 2 (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 the plaintiff and defendant No 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned and all such documents (except such as relate only to the sub-mortgage ) shall be delivered over to defendant No 1 or to such person as he appoints and defendant No 2 shall if so required, re convey or re transfer the property to defendant No 1 free from the said mortgage clear of and from all incumbrances created by defendant No 2 or any person claiming under him or any person under whom he claims and free from all liability arising from the mortgage or this suit and shall if so required deliver up to defendant No 1 quiet and peaceable possession of the said property and

(iii) that upon payment into the Court by defendant No 1 of the amount due to defendant No 2 the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 and that the balance if any shall then be paid

paid to defendant No 2 and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 2 for the amount of the balance

3 And it is further ordered and decreed that if defendant No 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff the plaintiff shall bring into the Court all documents etc [as in sub-clause (a) of clause 2]

4 And it is hereby further ordered and decreed that in default of payment by defendants Nos 1 and 2 as aforesaid the plaintiff may apply to the Court for a final decree for sale and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold and that for the purposes of such sale the plaintiff and defendant No 2 shall produce before the Court or such officer as it appoints all documents in their possession or power relating to the mortgaged property

5 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure 1908 and that the balance if any shall be applied in payment of the amount due to defendant No 2 and that if any balance be left it shall be paid to defendant No 1 or other persons entitled to receive the

6 And it is hereby further ordered and decreed that if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff and defendant No 2 the plaintiff or defendant No 2 or both of them as the case may be shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree

defendant No 2 or defendant No 1 (as the case may be) for the amount of the balance

7 And it is hereby further ordered and decreed that, if defendant No 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff but defendant No 1 makes default in payment of the amount due to defendant No 2, defendant No 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—*(declarations in the ordinary form to be introduced according to the nature of defendant No 2 s mortgage and the remedies open to him thereunder)*

8 And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

*Description of the mortgaged property*

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TO THE

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* With effect from the 1st April 1930

† The amendments made by Act XX will come into force on the 1st April 1930

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With effect from the 1st April 1929

* To have effect up to the 31st day of March 1930.

* With effect from 1930.

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* With effect from the 1st April 1930.

* *To come into force on the 1st April 1930*



MGIPC—M—IX 161—1-4-30—2,500.